

FEDERAL REGISTER



VOLUME 18

NUMBER 158

Washington, Thursday, August 13, 1953

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

PART 24—FORMAL EDUCATION REQUIREMENTS FOR APPOINTMENT TO CERTAIN SCIENTIFIC, TECHNICAL, AND PROFESSIONAL POSITIONS

MISCELLANEOUS AMENDMENTS

1. Effective upon publication in the *FEDERAL REGISTER*, the positions listed below are excepted from the competitive service under Schedule C.

§ 6.312 *Department of Commerce.*
* * *

(e) *Business Services Administration.*
(1) Director, Office of Field Service.
(2) One Special Assistant to the Director, Office of Field Service.

§ 6.314 *Executive Office of the President—(a) Bureau of the Budget.* * * *
(2) Two Assistant Directors.
(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 10440, March 31, 1953, 18 F. R. 1823).

2. In § 24.15 the headnote is changed from "Range Conservationist" to "Range Management Assistant, GS-454-5" and the reference to Range Conservationists in paragraph (b) is amended to read "Range Management Assistants."

(Sec. 11, 53 Stat. 390; 5 U. S. C. 860)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WIL. C. HULL,
Executive Assistant.

[F. R. Doc. 53-7142; Filed, Aug. 12, 1953; 8:55 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration, Department of Agriculture

Subchapter B—Federal Farm Loan System

PART 10—FEDERAL LAND BANKS GENERALLY

PART 11—NATIONAL FARM LOAN ASSOCIATIONS

PART 19—FEES AND CHARGES ON LOANS

REVISION OF PARTS

Inasmuch as, effective July 1, 1953, the Policy Manual for Federal Land Banks,

the Operations Manual for Federal Land Banks and the Manual for National Farm Loan Associations, which were the source of Parts 10, 11, and 19 of Title 6 of the Code of Federal Regulations, were revised and combined as two new manuals under the titles "Federal Land Bank Manual" and "National Farm Loan Association Manual", such Parts 10, 11, and 19 of Title 6 of the Code of Federal Regulations are hereby revised in conformity with such new manuals to read as follows:

PART 10—FEDERAL LAND BANKS GENERALLY

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Guardians.
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Landlords.
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	AUTHORITY: §§ 10.1 to 10.296 issued under sec. 6, 47 Stat. 14, sec. 33, 48 Stat. 43; 12 U. S. C. 665, 1017. Statutory provisions interpreted or applied are cited to text.
	NOTE: §§ 10.1 to 10.296 are from Federal Land Bank Manual and corresponding section numbers in manual are included as part of code section number following decimal.
	Where the word "bank" appears alone, it refers to a Federal land bank, all other banks being properly identified by name; the word "Corporation" refers to the Federal Farm Mortgage Corporation; the word "association" refers to a national farm loan association; and the word "Administration" refers to the Washington office of the Farm Credit Administration.
	ELIGIBILITY OF APPLICANTS
	§ 10.1 General determination. A person will be deemed to be "engaged in

farming operations" within the meaning of the first sentence of section 12 (Sixth) of the Federal Farm Loan Act (12 U. S. C. 771 (6)) if, in the capacity of owner, lessee, or tenant of a farm, he actively participates personally or through an agent to a substantial degree in the management and conduct of the farming operations on any farm land.

§ 10.2 *Executors and administrators (including temporary administrators)* Loans may be made to executors and administrators (including temporary administrators) when (a) either some individual beneficiary of the decedent's estate, or the executor, administrator, or any coexecutor or coadministrator of the estate, independently of his representative capacity, is (1) eligible as a borrower, and (2) owns, or is about to become the owner of, an interest in the property on which the loan is sought, and (3) can and will incur personal liability for the loan and assume the obligations of national farm loan association membership; and (b) a valid lien can and will be given on the property on which the loan is sought. As used in this section, the term "eligible as a borrower" means a person who is engaged in farming operations, or who is shortly to become engaged in farming operations, or who derives the principal part of his income from farming operations.

§ 10.3 *Heirs (including a sole heir taking without administration), devisees, and grantees of a deceased owner of farm land.* Loans may be made to heirs (including a sole heir taking without administration), devisees, and grantees of a deceased owner of farm land under the same conditions as will permit a loan's being made to any other owner of farm land.

§ 10.4 *Trustees (whether appointed by will or deed), and other fiduciaries.* Loans may be made to trustees (whether appointed by will or deed) when (a) the trustee in his fiduciary capacity is engaged, or shortly to become engaged, in farming operations, or the beneficiaries of the trust are engaged in farming operations or derive the principal part of their income from farming operations; and (b) a valid lien can and will be given on the property on which the loan is sought; and (c) the trustee, or any co-trustee, or some individual beneficiary of the trust can and will incur personal liability for the loan, and assume the obligations of national farm loan association membership.

§ 10.5 *Guardians.* Loans may be made to guardians when (a) the guardian in his fiduciary capacity is engaged, or shortly to become engaged, in farming operations, or the wards are engaged in farming operations or derive the principal part of their income from farming operations; and (b) a valid lien can and will be given on the property on which the loan is sought; and (c) the guardian, or any co-guardian, independently of his fiduciary capacity owns an interest in the property, and can and will incur personal liability for the loan and assume the obligations of national farm loan association membership.

§ 10.6 *Persons not legally competent (including infants, insane persons, and incompetents) when not represented by a guardian.* Loans may not be made to persons not legally competent (including infants, insane persons, and incompetents) when not represented by a guardian; and property in which such a person, not represented by a guardian, owns an interest is ineligible as security for a loan.

§ 10.7 *Landlords.* Loans may be made to landlords when (a) the landlord has the right to and does exercise substantial control over the management of the farm on which the loan is sought; or (b) he is engaged, or shortly to become engaged, in farming operations, independently of his capacity as landlord of the farm on which the loan is sought; or (c) the principal part of his income is derived from farming operations.

§ 10.8 *Owners of future interests.* Loans may be made to owners of future interests when (a) all interests necessary to the creation of a fee simple estate in the land on which the loan is sought are included in the mortgage; and (b) the owner of the future interest is engaged, or shortly to become engaged, in farming operations independently of his capacity as owner of a future interest in the farm on which the loan is sought, or derives the principal part of his income from farming operations.

§ 10.9 *Tenants for years.* Loans may not be made to tenants for years ordinarily, although in certain circumstances a perpetual leasehold might constitute legally satisfactory security.

§ 10.10 *Life tenants.* Loans may be made to life tenants when (a) all interests necessary to the creation of a fee simple estate in the land on which the loan is sought are included in the mortgage; and (b) the life tenant, by reason of farming operations conducted by him on the land covered by his life interest, or otherwise, is eligible as a borrower. As used in this section, the term "eligible as a borrower" means a person who is engaged in farming operations, or who is shortly to become engaged in farming operations, or who derives the principal part of his income from farming operations.

§ 10.11 *Owners of undivided interests (including partners)* Loans may be made to owners of undivided interests (including partners) when (a) all such interests are included in the mortgage; and (b) the owner who desires the loan is, by reason of farming operations conducted by him on the land covered by his undivided interest, or otherwise, eligible as a borrower. As used in this section, the term "eligible as a borrower" means a person who is engaged in farming operations, or who is shortly to become engaged in farming operations, or who derives the principal part of his income from farming operations.

§ 10.12 *Husband and wife.* Loans may be made on their respective lands to a husband and wife owning land in severalty.

§ 10.13 *Aliens.* To the extent that State laws do not restrict the right of

aliens to hold and convey real estate, loans may be made to aliens upon the same basis as to citizens: *Provided, however* That such loans are not prohibited by and are made in conformity with the provisions of the Trading with the Enemy Act, as amended, the Foreign Funds Control regulations, and any other applicable laws and regulations relating to transactions with or property of enemy or other aliens.

§ 10.14 *Individuals taking title from a corporation (bona fide ownership required)* Loans which are otherwise qualified may be made to individuals who have taken title from a corporation in which they were interested as stockholders, provided the transfer is in good faith and not a mere temporary expedient for the purpose of evading the provisions of the Federal Farm Loan Act, which preclude loans to corporations other than corporations engaged in the raising of livestock.

§ 10.15 *Corporations.* Loans may be made to corporations (in addition to those engaged in raising livestock) when acting solely in a representative or fiduciary capacity for individual beneficiaries, provided the conditions as to fiduciaries are satisfied.

§ 10.16 *Livestock corporations.* Loans may be made to livestock corporations, provided the corporation is primarily engaged in the raising of livestock. It may also be engaged in such general farming operations as are incidental to its livestock raising. If it engages in any secondary operations not strictly incidental to livestock raising, such secondary operations may constitute only a minor part of the corporation's activities.

GENERAL PROVISIONS

§ 10.19 *Definitions.* For the purposes of section 12 (Fourth) of the Federal Farm Loan Act, as amended (12 U. S. C. 771 (4)) the terms "equipment" and "improvement" are defined as follows:

(a) *Equipment.* The term equipment shall include implements appropriate for the operation of a farm, and may consist of teams as well as machinery, tools, and like articles.

(b) *Improvement.* The term improvement shall include any beneficial structure or any useful, permanent physical change tending to increase the productive value of the farm, such as clearing, tiling, drainage, fencing, building, and preparations for irrigation.

§ 10.25 *Security standards.* To be acceptable security for a loan, a property must meet each of the following minimum standards:

(a) It must be capable of producing, under typical operation, sufficient normal agricultural earnings to pay farm operating expenses, including taxes and other fixed charges, maintain the property, and meet installments on a loan that would be proper to a typical owner of the property.

(b) It must be sufficiently desirable to be readily salable or rentable under normal agricultural conditions.

(c) It must be sufficiently durable to maintain satisfactory production during the loan term specified.

(d) It must have sufficient stability of value to assure that, on a loan that would be proper to a typical owner of the property, the bank could recover its investment if unforeseen difficulties should result in acquirement of the property.

While the normal agricultural earnings must be sufficient to meet the expenses specified in requirement (a) it is not necessary that they also be adequate in all cases to meet family living expenses. When it is necessary to rely on income other than farm earnings for family living expenses, such supplemental income must be available to the applicant and to a typical owner from dependable sources and in an amount sufficient to support customary living standards.

§ 10.26 *Normal agricultural value.* The normal agricultural value of a farm is the amount a typical purchaser would, under usual condition, be willing to pay and be justified in paying for the property for customary agricultural uses, including farm home advantages, with the expectation of receiving normal net earnings from the farm.

§ 10.27 *Basis of loan and appraisal.* The normal agricultural value of a farm, established by a land bank appraiser, shall be the basis for a loan. In making the appraisal the net earnings of the farm shall be determined by using normal commodity prices and the related level of normal costs. Normal prices and related costs shall be determined on the basis of historical prices and costs adjusted for trends and the long term economic outlook and be approved by the Farm Credit Administration.

§ 10.49 *Computing amount loanable to one borrower.* The aggregate amount of existing bank loans to any one borrower for the purpose of applying the limitation in section 12 (Seventh) of the Federal Farm Loan Act (12 U. S. C. 771) shall be the total unpaid principal of all indebtedness to the bank and any other banks of the system which is secured by mortgages or real estate sales contracts on property owned or being acquired by the applicant, or for which the applicant is personally liable, less the unpaid principal of (a) purchase money mortgage or real estate contract indebtedness in connection with which no association or bank stock has been issued, (b) indebtedness which is secured by property the applicant no longer owns and which has been assumed with the permission of the bank by a subsequent owner of the property in accordance with section 12 (Sixth) of the Federal Farm Loan Act (12 U. S. C. 771), (c) indebtedness which is secured by property the applicant no longer owns and for which liability was incurred otherwise than by agreement with the bank, (d) indebtedness which is secured by property in which the applicant has not had any ownership interest other than an interest of dower or curtesy since the liability was incurred, and (e) assets purchased from a joint stock land bank under section 16 of the Federal Farm Loan Act (12 U. S. C. 823)

§ 10.54 *Interest rates on loans made through associations.* Notwithstanding such loan interest rates exceed by more than 1 per centum per annum the inter-

est rate on the Federal farm loan bonds of the last series issued prior to the making of any such loans, approval is given to an interest rate of 4 per centum per annum on loans made by banks through associations generally, except that higher interest rates are approved for the following banks as indicated:

	Interest rate (per cent)
Federal land bank:—	
Springfield—	4½
Baltimore—	4½
Columbia—	5

(Secs. 12 "Second" 17, 39 Stat. 370, 375, as amended; 12 U. S. C. 771 "Second" 831 (b))

§ 10.55 *Special interest rates.* Approval is given to an interest rate one-half of 1 per centum per annum in excess of the interest rate provided in § 10.54, for bank loans through associations secured by first mortgages on the following farm property in the continental United States:

(a) Land that is employed primarily in the production of naval stores as defined by section 2 of the Naval Stores Act (Sec. 2, 42 Stat. 1435, 7 U. S. C. 92)

(b) Land used for the raising of livestock, in estimating the earning power and in establishing the value of which leases or permits for the use of other lands were taken into consideration and were a factor in determining the amount of the loan; and

(c) Land, a substantial part of the earnings from which is derived from orchard crops.

(Secs. 12 "Second" 17, 39 Stat. 370, 375, as amended; 12 U. S. C. 771 "Second" 831 (b))

INSURANCE REQUIREMENTS AND USE OF LOSS PROCEEDS

AUTHORITY: §§ 10.56 to 10.70 interpret or apply sec. 12, Ninth, 39 Stat. 370, as amended; 12 U. S. C. 771, Ninth.

§ 10.56 *Amount of insurance.* Insurance on buildings shall be required against such risks and in such amounts as the bank may determine to be necessary for adequate protection of the mortgagee's interest. A bank may delegate to associations full or limited authority with respect to the determination of insurance requirements. In making the determination consideration should be given to the size of the loan in relation to the value of the security, the extent to which the buildings enter into such value, and the extent to which the borrower's ability to operate the property efficiently would be affected if a loss occurred and the buildings were not replaced.

§ 10.57 *Reduction of insurance under certain circumstances.* Insurance requirements on existing loans may be reduced or discontinued upon the request of the borrower or on the initiative of the bank or association when such action is not prejudicial to the interest of the bank and the association. If insurance requirements are reduced or discontinued, the borrower should be given advance notice. The notice should clearly indicate that the change in the insurance requirements of the bank in no way affects the amount of insurance the borrower should carry for his own protection.

§ 10.58 *Acceptable insurers.* Insurance required shall be evidenced by a lawful policy or policies issued by any insurance company, including any State-supervised mutual insurance company, which is satisfactory to the bank: *Provided*, That such company be authorized to do such insurance business, and be subject to service of process in suits brought, in the State in which the insured property is located, except that, when insurance is procured and paid for by the bank upon default under the mortgage, such insurance company may be one which is subject to service of process in suits brought in the State where the bank is located. The acceptance by a bank of insurance from an organization other than one provided for by this section shall be subject to the approval of the Commissioner.

§ 10.59 *Losses to be made payable to mortgagee; exception.* Insurance shall be made payable to the bank and Corporation, as mortgagees, as their interests may appear at time of loss, and shall afford the bank and the Corporation the same protection they would have under the New York standard mortgage clause. The bank may, in its discretion, permit individual losses, not in excess of an amount fixed by the bank with due regard to adequate protection of the mortgagee, to be paid directly to the mortgagee for use in the prompt reconstruction of the buildings destroyed. The provisions of §§ 10.60 to 10.68, inclusive, shall not be applicable to losses which are paid directly to the mortgagee, with the permission of the bank, for use in reconstruction.

§ 10.60 *Subsequent owner deemed "mortgagor" under certain circumstances.* When a subsequent owner of a mortgaged farm has assumed the mortgage and in the case of a land bank loan the stock interests of the original mortgagee in accordance with the provisions of section 12 (Sixth) of the Federal Farm Loan Act (12 U. S. C. 771 (6)) and is primarily liable therefor, the term "mortgagor" shall be deemed for the purposes of the regulations in this part to refer to such subsequent owner.

§ 10.61 *Mortgagor's option to use loss proceeds for reconstruction.* At the option of the mortgagor and subject to the provisions of these regulations, any sum received in settlement of a loss covered by insurance required by the regulations in this part may be used to pay for the reconstruction of the buildings involved.

§ 10.62 *Circumstances under which mortgagor's option to use loss proceeds does not obtain.* The option of the mortgagor referred to in these regulations shall not apply in the case of (a) any sum received under a policy of insurance which was not provided or paid for by the mortgagor, or (b) any sum with respect to which liability to the mortgagee is denied by the insurer, unless and until such denial be rescinded or until final judgment of a court of competent jurisdiction that the insurer is liable to the mortgagor. In either event the mortgagor shall initiate the steps otherwise necessary under the regulations in this part for the exercise of

his option within 30 days after the establishment of the liability of the insurer to him for such loss.

§ 10.63 *Manner in which mortgagor's option to use loss proceeds shall be exercised.* The bank or association as promptly as possible after the receipt of the sum referred to in section 61 shall send to the mortgagor a notice in writing thereof. Within 30 days after such notice is sent, if the mortgagor desires to exercise his option, he shall so notify the bank or association in writing. With such notice or within 30 days thereafter, unless such time for good cause be extended, the mortgagor shall furnish information in such form as shall be satisfactory covering the plans of the mortgagor for the reconstruction of the building involved in sound and serviceable form and condition, at least equal to that which existed immediately prior to the loss. Within said 30 days the mortgagor shall also furnish satisfactory assurance that such reconstruction will be completed within a reasonable time, and that there will be no unsatisfied liens for labor, materials, and/or other expenses that will have priority over the mortgage when such reconstruction shall have been completed or when the said sum received shall have been paid to or for the account of the mortgagor.

§ 10.64 *Loss proceeds not to be disbursed in absence of evidence that prior liens will not attach.* No sum received shall be paid to or for the account of the mortgagor for the purpose of enabling him to reconstruct a building until the bank or association is satisfied that no lien by reason of reconstruction of the buildings covered by such insurance will have priority over the mortgage thereon. The regulations adopted by the bank should establish adequate safeguards with respect to such disbursements.

§ 10.65 *Reconstruction of improvements in different form.* If the mortgagor desires to use the insurance money, in whole or in part, in order to replace the building involved with an insurable building of less expensive type, or to substitute any other insurable building, the said fund may be used for such purpose, provided the land bank or association is satisfied that the proposed building will be suitable and adequate to the agricultural needs of the farm.

§ 10.66 *Evidence that mortgagor can supply additional funds; meaning of term "reconstruction."* If the sum received (after making the deductions, if any, authorized by the regulations in this part) be inadequate to enable the mortgagor to reconstruct as herein provided, and he desires nevertheless to do so, he shall furnish satisfactory assurance that he will have the necessary additional funds. Where, under the regulations in this part, a building may be repaired, replaced, or substituted, the operations involved shall be deemed to be covered by the words "reconstruct" or "reconstruction," as the case may require.

§ 10.67 *Application of loss proceeds to mortgage debt.* If the mortgagor fails or refuses to exercise his option in

accordance with the regulations in this part, or to comply with all of the conditions of these regulations with respect thereto, or if the mortgage be in process of foreclosure, or if the mortgagor be in default in such manner that the mortgage is subject to foreclosure, the sum received may be retained for application upon the indebtedness secured by such mortgage or as collateral security therefor. Any portion of the sum received which is not used for reconstruction may also be retained for application upon the indebtedness or as collateral security therefor.

§ 10.68 *Conditional release of loss proceeds.* No insurance proceeds may be released unconditionally to a borrower or a junior lienor except for the purpose and under the conditions hereinbefore set forth, unless the remaining security meets the security requirements for a new loan. Exceptions to this requirement may be made only where it is clearly to the best interest of the mortgagee to do so. Where insurance proceeds are released unconditionally to a borrower or junior lienor, the procedure governing the release of funds received from the sale of part of the security shall be followed so far as applicable.

§ 10.69 *Nonapplicability of regulations.* The provisions of §§ 10.61 through 10.68 are not applicable in the case of settlements of losses on buildings not required by the bank to be insured.

§ 10.70 *Applicability of regulations to loans, mortgages, and contracts purchased from FPMC.* The provisions with reference to insurance in connection with mortgage loans also apply to loans, purchase money mortgages, and contracts purchased from the Federal Farm Mortgage Corporation.

PURCHASES OF FPMC MORTGAGES

§ 10.87 *Reduction of interest rate.* The interest rate on any Commissioner loan, purchase money mortgage, or contract purchased or acquired by the bank must be reduced to the rate applicable to new land bank loans as of the date of the acquisition of the loan, purchase money mortgage, or contract by the bank, but upon acquisition the bank may make the reduced rate effective retroactively. This reduction in interest may be accomplished generally in the same manner and under the same procedure as was used to reduce the contract interest rate on land bank loans to 4 percent. The bank should notify each borrower of the interest reduction when effected. It may also wish to consider furnishing, or offering to furnish upon request of the borrower, an individual instrument in recordable form evidencing the reduction.

§ 10.89 *Maximum and minimum loanable amounts.* The limitations with respect to the maximum and minimum amounts of loans as provided in section 12 (Seventh) of the Federal Farm Loan Act (12 U. S. C. 771 (7)), shall be applied in connection with the purchase of a Commissioner loan, purchase money mortgage, or contract by the land bank. Accordingly no such asset may be purchased from the Corporation if the amount thereof will increase the bor-

rower's total indebtedness to the bank and any other banks of the system to an amount in excess of \$100,000.

§ 10.92 *Acquiring stock in addition to any available stock which borrower owns; retirement of stock owned by borrower.* "Any available stock" already owned by the borrower shall be stock in an unimpaired association which is owned by the borrower or in which the borrower owns the beneficial interest, and which, computed at its par value, is in excess of 5 percent of any indebtedness (unpaid principal, advances, and any other items properly chargeable to the borrower, including accrued interest thereon at the date of acquirement of the purchased asset) to the bank in connection with which such stock was issued. Stock in an unimpaired association other than the one through which the purchased asset is being acquired may be treated as available stock provided such association consents to its retirement. Under the foregoing definition, where a borrower has more than one loan through the association or owns stock in connection with a loan which is secured only in part by the property securing the asset being acquired, any excess stock in connection with such loan or loans is available stock.

§ 10.93 *Farm Credit Administration approval of retirement of association or related bank stock.* The Administration approves the retirement, under section 7 of the Federal Farm Loan Act (12 U. S. C. 721) of related bank stock in an amount equal to such available association stock where such retirement is authorized by the board of directors of the bank and the proceeds are to be used for the purchase of stock needed in connection with the acquired asset.

§ 10.94 *Classes of borrowers; borrowers' disposition of stock or purchase of additional stock; election to membership and purchase of stock by borrowers not members of an association.* It will be necessary to deal with three classes of persons in meeting the foregoing requirements: (a) Those who are members of the association through which the paper is being acquired and who own sufficient available stock; (b) those who are members of the association but who do not own sufficient available stock in connection with any paid-down bank loan or loans; and (c) those who are not members of the association and who own no stock in it. As to the first class, the existing available stock or the stock purchased with the proceeds of retired available stock must be pledged as collateral security in accordance with the provisions of the Federal Farm Loan Act, as amended, for the indebtedness being acquired. Persons in the second class must purchase additional stock either in cash or under the methods hereinafter prescribed and pledge such stock, as well as the available stock or the stock purchased with the proceeds of the retired available stock, for the indebtedness being acquired. Persons in the third class must be elected to membership, purchase stock either for cash or under the methods hereinafter prescribed, and pledge such stock as collateral security for the indebtedness being acquired.

§ 10.95 *Personal liability of borrower.* In each of the classes mentioned above the person owning the property subject to the loan, mortgage, or contract being acquired may or may not be personally liable on the indebtedness. If not personally liable, the person must become personally liable on the paper being acquired by the bank.

§ 10.96 *Restrictions on eligibility of borrowers for association membership.* To be eligible for association membership, a person must meet the requirements for assumption of a bank mortgage under section 12 (Sixth) of the Federal Farm Loan Act, i. e., the person need not be a farmer, but must be a natural person or a livestock corporation eligible for membership.

§ 10.97 *Payment in cash by borrower where amount of stock required is not substantial, additional loan to borrower to provide for payment of stock to be purchased, release by bank of future payment funds in amounts sufficient to cover the purchase of required stock; procedure for purchase of stock by borrower.* Where the amount of stock required is not substantial, it may be feasible to obtain payment therefor in cash. In other cases the borrower may desire, and it may be feasible, to provide for payment for the stock by means of an additional loan. It will also be appropriate for the bank to permit the release of future payment funds in amounts sufficient to cover the purchase of the required stock. However, where none of the foregoing procedures is followed, the stock may be purchased under either of the following procedures:

(a) The bank may extend credit on a secured or unsecured basis to the borrower in an amount sufficient to purchase such stock. The type of agreement to be entered into with the borrower for the repayment of the purchase price of the stock and the procedure to be followed in handling such transactions on the bank's books shall have the approval of the Administration.

(b) The association, upon application by the borrower, may extend credit in an amount sufficient to purchase such stock, subject to the following:

(1) In such application the borrower shall agree that his liability to the association for such stock shall be secured by a lien on the borrower's property which is security for the paper being acquired, junior to any lien held or to be acquired by the Federal land bank on such property. It is not necessary that the lien for the stock indebtedness be recorded.

(2) The association may charge the borrower interest at a rate not to exceed 4 per centum per annum on the unpaid balance of any indebtedness incurred for this purpose.

(3) The association may in turn, pursuant to 12 U. S. C. 743, borrow from the Federal land bank the amount necessary to purchase stock in the bank where it has sold its stock on credit to its borrowers. Such borrowing may be evidenced by an assignment by the association to the bank of the borrower's agreement to pay for stock in the association.

(4) The applicant may request a deferment of principal payments in order to enable the association or the bank, as the case may be, to collect the amount of the indebtedness for stock in the association, and the bank may grant such deferments under the provisions of '12 U. S. C. 781, Nineteenth.

§ 10.98 *Issuance of new stock sufficient to cover existing loan; retirement of existing stock.* Where an applicant who does not own the outstanding stock in connection with the existing bank loan on the farm covered by the mortgage or contract being purchased by the bank from the Corporation desires or is required by the bank, in its discretion, to acquire such stock or new stock in lieu thereof but cannot acquire the outstanding stock, the outstanding stock may be retired and paid off and new stock issued to the applicant and pledged in connection with the existing bank loan. The bank should require that the applicant purchase only enough new stock to collateralize the existing bank loan in the proportion of one share of stock for every \$100 or major fraction thereof of the unpaid indebtedness under the existing bank loan or the original face amount of the loan, whichever is less. When stock in that amount is issued to the applicant, all other stock outstanding in relation to the existing bank loan should be retired. The Administration hereby approves the retirement of stock in such cases where it is authorized by the bank's board of directors. Where the applicant acquires no stock in connection with the bank loan, then, unless he procures from the owner of the association stock held in connection with the bank loan a power of attorney or other authorization to exercise the exclusive right to vote in connection with both loans, the applicant must agree with the association, in consideration of the bank's purchase of the Corporation asset, to forego the right to vote at any association meeting where he and the other stockholders are present, except when they agree as to which shall cast the one vote.

SPECIAL PAYMENTS

§ 10.111 *Special payments.* A bank may accept special payments on a bank loan or payment in full thereof either before or after 5 years from the date the loan was made. Where payment arises from the refinancing of the loan from a non-Government lending source and the loan has not been in force for at least 5 years, the bank may collect from the borrower such a sum as will reimburse it for the expense of making the loan. In all other cases of special principal payments or full payment of bank loans, the bank should not charge a prepayment fee nor should it ordinarily charge interest beyond the date the funds are received.

FUTURE PAYMENT FUNDS

AUTHORITY: §§ 10.116 to 10.131 interpret or apply sec. 17, 50 Stat. 708; 12 U. S. C. 781, Eighteenth.

§ 10.116 *Future payment funds as authorized by 12 U. S. C. 781, Eighteenth.* Future payment funds shall be held for

subsequent credit upon indebtedness to the bank or the Corporation, except in cases of unusual circumstances where the release of the funds is justified. On future payment funds applied, interest shall be allowed to the date of application at the effective interest rate(s) applicable to the indebtedness in connection with which such funds are applied. On future payment funds released under unusual circumstances, interest shall be allowed to the date released at the effective interest rate(s) applicable to the indebtedness in connection with which such funds are held.

§ 10.117 *Authority to limit funds.* A bank may limit the total amount of future payment funds which will be held in connection with a land bank loan, but any limitation established shall not be less than the total of all installments maturing on the loan during the 4 years following the date of acceptance of the first of such payments. Interest accruing after the bank's limitation is reached may be held in the future payment fund.

§ 10.118 *Indebtedness current before funds are accepted.* Future payment funds shall not be accepted by a bank while there are outstanding unpaid matured obligations of the borrower to the bank on such indebtedness or to the Corporation on an indebtedness secured by the same or common real property. *Provided,* That at the direction of the borrower funds tendered as future payment funds may be used to pay such matured and unpaid obligations and any balance remaining may be accepted as future payment funds.

§ 10.119 *Evidence of acceptance of funds.* Upon acceptance of future payment funds, the bank shall furnish the borrower with a receipt, which shall identify the indebtedness in connection with which the future payment funds are accepted, and set forth generally the conditions under which such funds are held: *Provided,* That if the bank, under a procedure approved by the Administration, furnishes the borrower a general statement of such conditions to apply to one or more payments, the receipts for such payments need not set forth the conditions. The form of receipt used by a bank shall have the approval of the Administration.

§ 10.120 *Joint indebtedness to a bank and the Corporation.* In cases where the respective indebtednesses of the borrower to the bank and Corporation are secured by the same or common real property, amounts to be accepted as future payment funds (by the bank for subsequent credit on its indebtedness and by the Corporation for subsequent credit on its indebtedness) should ordinarily be allocated to each indebtedness in such manner as to assure the borrower of relatively the same security against future delinquency on the respective indebtednesses.

§ 10.121 *Unrelated loans.* In those cases in which a borrower has indebtedness to the bank, the Corporation, or both, which is not secured by the same or common real property, determination should be made by the bank, on

the basis of the facts in each case, as to the indebtedness or indebtednesses on which future payment funds are to be accepted and held for subsequent credit. When future payment funds are accepted in these cases, they shall be subject to all the provisions of the regulations in this part governing future payment funds insofar as practicable.

§ 10.122 *Interest allowance.* Interest shall be allowed on future payment funds in accordance with the following terms and conditions:

(a) The rate(s) at which interest is allowed the borrower on future payment funds applied shall be the rate(s) effective on those installment dates of the indebtedness to which the future payment funds are applied and which installment dates occurred during the period such future payment funds were held. As used in this part, "effective interest rate" means the rate actually charged the borrower on the indebtedness on which future payment funds are applied.

(b) If it is decided in unusual circumstances that the release of future payment funds held in connection with a borrower's indebtedness is justified, interest shall be allowed on such funds during the entire period that the funds were held. The rate(s) at which interest will be allowed the borrower in such instances shall be the rate(s) that were effective on the indebtedness in connection with which the future payment funds were held.

(c) Interest shall be allowed on future payment funds from the date of acceptance of such funds to the date of their disposition and such interest shall be compounded as of the installment dates of the borrower's indebtedness which occurred during the period the future payment funds were held by the bank: *Provided,* That, at the option of the bank, interest need not be allowed upon any amount which has not been held for the credit of the borrower as unapplied future payment funds for a period up to 1 month: *And provided further,* That in any case where the aggregate interest credit does not exceed 25 cents, no allowance need be made.

(d) Interest allowed on future payment funds shall be credited to the borrower as of the date of the disposition of the funds.

§ 10.123 *Interest liability.* The books and statements of condition of the bank and Corporation shall reflect the liability for interest accrued in connection with future payment funds held for subsequent application. Such liability shall be accrued on installment dates and for the periods provided in § 10.122 for determining interest allowances, at the rate actually charged the borrower on the unmatured portion of the indebtedness in connection with which such future payment funds are held. Such accruals shall be subject to any adjustment required upon application of the future payment funds in order that the interest allowed on future payment funds shall conform to the provisions of § 10.122.

§ 10.124 *Application of funds not involving transfers between the bank and the Corporation.* Subject to any limita-

tions contained in the Federal Farm Loan Act, the bank shall apply future payment funds on the borrower's indebtedness in connection with which they are held, or on other indebtedness to the bank when such indebtedness is secured by the same or common real property, in accordance with the following terms and conditions:

(a) As the borrower may direct in writing, the bank shall retire out of future payment funds held for the borrower's credit any portion of the indebtedness to the bank on regular installment dates; and, upon the written request of the borrower, the bank may, at any time, retire out of future payment funds held for the borrower's credit any portion of the indebtedness to the bank.

(b) At its option the bank may retire out of future payment funds held for the borrower's credit on his bank indebtedness any portion of the indebtedness to the bank as and when the same becomes due and payable.

(c) If at any time the balance of unapplied future payment funds held for a borrower's credit together with the interest allowance thereon equals or exceeds the total amount of the indebtedness, the whole indebtedness shall become due and payable at once and shall be retired out of such balance. With the agreement or consent of the borrower, a bank may also provide that if at any time the balance of unapplied future payment funds held for a borrower's credit together with the interest allowance thereon and the amount of stock owned by the borrower in connection with a loan equals or exceeds the total amount of the indebtedness, the whole indebtedness shall become due and payable at once and shall be retired out of such balance and stock proceeds.

(d) In the event of the borrower's death or bankruptcy, or in the event of transfer of the indebtedness by the bank or conveyance of title to the property securing the indebtedness by the borrower, the bank at its option may apply on the indebtedness all or any portion of the future payment funds held for the borrower's credit.

§ 10.125 *Application of funds on un-related loans.* At the borrower's written request the bank may retire out of future payment funds held for the borrower's credit, any portion of the borrower's indebtedness to the bank that is not secured in whole or in part by the same property securing the indebtedness to which the funds were allocated when received.

§ 10.126 *Funds held by Corporation.* The provisions of §§ 10.124 and 10.125 shall apply with equal force to any application on the borrower's indebtedness to the Corporation from the future payment funds held by the Corporation for the borrower's credit; for this purpose the term "Corporation" shall be substituted for the term "bank."

§ 10.127 *Transfer of funds from bank to Corporation, same security.* Future payment funds held for the credit of the borrower on his bank indebtedness shall be applied on the borrower's indebtedness to the Corporation, which is secured

in whole or in part by the same real property securing the indebtedness to the bank, in accordance with the following terms and conditions:

(a) At the borrower's written direction the bank shall retire out of future payment funds held for the borrower's credit on his bank indebtedness, any portion of the borrower's indebtedness to the Corporation, as and when the same becomes due and payable.

(b) At the option of the bank and with the consent of the Corporation, the bank may retire out of future payment funds held for the borrower's credit on his bank indebtedness any portion of the borrower's indebtedness to the Corporation, as and when the same becomes due and payable.

(c) If at any time the total of unapplied future payment funds held for a borrower's credit on his indebtedness to both the bank and the Corporation together with the interest allowance thereon equals, or exceeds the total amount of his indebtedness to the Corporation, at the discretion of the bank, upon written direction from the borrower and with the consent of the Corporation, the whole indebtedness to the Corporation may be regarded as having become due and payable at once and may be retired out of such funds.

§ 10.128 *Transfer of funds from bank to Corporation; different security.* In any case in which a borrower has indebtedness to the bank and the Corporation which is not secured by the same or common real property, at the borrower's written request and with the consent of the Corporation, the bank may, out of future payment funds held for the borrower's credit on his bank indebtedness, retire any portion of the borrower's indebtedness to the Corporation, as and when the same becomes due and payable, or, if at any time the total of unapplied future payment funds held for a borrower's credit on his indebtedness to both the bank and the Corporation together with the interest allowance thereon equals or exceeds the total amount of his indebtedness to the Corporation, the whole indebtedness to the Corporation may be regarded as having become due and payable at once and may be retired out of such funds.

§ 10.129 *Transfer of funds from bank to Corporation, interest adjustment.* The bank shall make transfers, which are within the purview of §§ 10.127 and 10.128, in the full amount required to retire the indebtedness to the Corporation and no reimbursement for interest credited thereon as of the date of transfer or prior installment dates shall be made to the bank by the Corporation; provided, however, that if the indebtedness to the Corporation to which the future payment funds are to be applied bears a higher effective rate of interest than the indebtedness on which the funds were held unapplied, then the Corporation shall allow a simple interest credit at the difference in such rates for the period(s) such difference existed or the period(s) such funds were held unapplied by the bank, whichever is the lesser, and the bank shall transfer

an amount which, together with the simple interest credit allowed by the Corporation, will retire the indebtedness. The first amount accepted as future payment funds by the bank shall be considered as the first amount paid out of the future payment funds either on the indebtedness to the bank or on the indebtedness to the Corporation.

§ 10.130 *Transfer of funds from Corporation to bank.* The provisions of §§ 10.127, 10.128, and 10.129 shall apply with equal force to any application on the borrower's indebtedness to the bank from the future payment funds held by the Corporation for the borrower's credit; for this purpose the terms "bank" and "Corporation" shall be read conversely.

§ 10.131 *Disposition of unapplied funds.* When the balance of unapplied future payment funds held by the bank together with interest allowance thereon is reduced to \$10 or less, at its option the bank may apply such balance on the borrower's indebtedness to the bank, subject to notification to the borrower of such action and reversal if he so requests. Any balance of unapplied future payment funds together with interest allowance thereon held in connection with the borrower's indebtedness shall be refunded to the borrower by the bank when the indebtedness is paid in full: *Provided, however,* That amounts of future payment funds held by the bank for the credit of a borrower who is indebted also to the Corporation, may, at the written direction of the borrower, be transferred to the Corporation, when the borrower's indebtedness to the bank is paid in full. Such funds transferred shall be subject to an interest allowance by the Corporation, in accordance with §§ 10.122 (a) and 10.129. The provisions of this section shall apply with equal force to the disposition of balances of future payment funds held unapplied by the Corporation; for this purpose the terms "bank" and "Corporation" shall be read conversely.

SUBROGATION

§ 10.134 *Subrogation of insurer following payment of loss.* An insurance company which has made payment to a bank under the uniform loss payable clause, but which denies liability to the mortgagor, is not entitled to subrogation against the endorsing association because of such payment. Nor can such an insurer, in the case of an association-endorsed or direct loan, obtain an interest in the bank stock pledged with the bank as security for the loan. No assignment of mortgage or other form executed by a bank in favor of such an insurer shall by express provision or by implication undertake (a) to transfer any right of the bank against the endorsing association or any interest in the bank stock pledged by the association in connection with the loan, or (b) in the case of a direct loan, to transfer any right or interest to the insurance company in the direct loan stock.

RETIREMENT OF STOCK

§ 10.149 *General policy.* It is the general policy of the Administration that

the bank stock issued in connection with a loan made through an association shall not be retired in whole or in part until the loan has been paid in full except in individual cases where unusual circumstances are involved.

§ 10.150 *Partial retirement of stock.* In individual cases where the amount of bank stock held as security for a loan is substantially in excess of 5 percent of the unpaid balance of the loan and the bank determines that retirement of the excess stock is advisable, the Administration approves, under section 7 of the Federal Farm Loan Act (12 U. S. C. 721) the retirement of that portion of such stock which is in excess of 5 percent of the unpaid balance of the loan, provided (a) the capital stock of the association through which the existing loan was made is not impaired and such stock retirement will not make the principal remaining unpaid upon mortgages already received from the association exceed 20 times the amount of stock in the bank owned by such association, or the only stock outstanding in connection with the existing loan is bank stock, and (b) such retirement of stock is in accordance with authorization given by the bank's board of directors by appropriate resolution.

§ 10.151 *Retirement of stock to complete payment of loan with future payment funds.* If a bank has provided in the terms and conditions under which it has accepted future payment funds that when the amount of stock and the future payment funds held in connection with the loan are sufficient to pay off the loan in full, they may be so applied, and if the board of directors of the bank has adopted a resolution providing for the retirement of the stock in such circumstances, the Administration approves, under section 7 of the Federal Farm Loan Act (12 U. S. C. 721) such retirement of stock.

MINERAL RIGHTS

§ 10.218 *Holding for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 (Fourth (b)) of the Federal Farm Loan Act (12 U. S. C. 781 (4) (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the Administration.

BONDS

AUTHORITY: §§ 10.293 to 10.296 interpret or apply sec. 20, 39 Stat. 377; 12 U. S. C. 862.

§ 10.293 *Method of calling consolidated Federal farm loan bonds.* When any Federal land bank shall desire to call for redemption any consolidated Federal farm loan bonds outstanding on its behalf, it shall, pursuant to appropriate authorization of the 12 Federal land banks, file with the Farm Credit Administration, at least 20 days prior to the date on which the call is to become effective, a certified copy of a resolution of its

board of directors authorizing such call. The Land Bank Commissioner shall, at least 15 days prior to the date on which the call is to become effective, approve or disapprove the call and, if the call is approved, shall cause formal notice thereof to be published, at least 15 days prior to the effective date of the call, in the FEDERAL REGISTER and through any other facilities that the Farm Credit Administration may elect. Such notice shall describe the bonds so called for redemption and shall designate the place or places where and the date on and after which they will be payable. Approval of the call and publication of notice as herein required shall be deemed a complete call. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

§ 10.294 *Call for less than entire issue of consolidated Federal farm loan bonds.* In any case in which it is desired to call for redemption less than all of the outstanding bonds of any issue or issues, the bonds to be so called shall be selected in such manner as the Land Bank Commissioner shall prescribe.

§ 10.295 *Payment of lost or stolen bonds and coupons issued by a bank individually.* Whenever it appears to the Land Bank Commissioner, by clear and satisfactory evidence, that any interest-bearing bond or any coupon thereof issued by any Federal land bank or joint stock land bank has, without bad faith on the part of the owner, been lost, stolen, or destroyed, and is not lawfully held by any person as his own property, or has been so mutilated or defaced as to impair its value to the owner, and is identified by number and description, the Land Bank Commissioner may authorize payment to be made (upon approval of the proofs of loss, etc., bonds of indemnity and related papers filed with the banks of issue in such cases, detailed information as to which has been furnished the banks) without requiring the issuance of any new bonds for record purposes.

§ 10.296 *Owner of lost bond to file bond of indemnity.* The owner of any such lost, stolen, or destroyed bond or coupon shall file with the bank of issue a bond of indemnity in a penal sum equal to the face amount of the bond or coupon, plus an amount sufficient to protect the bank from any loss on account of interest which may be payable on such lost, stolen, or destroyed bond. A corporate surety to be approved by the bank of issue and the Land Bank Commissioner shall be required for the bond of indemnity when the penal sum exceeds \$50.

PART 11—NATIONAL FARM LOAN ASSOCIATIONS

CLASSIFICATION OF ASSOCIATIONS

Sec. 11.378 Classification of associations.

RETIREMENT OF STOCK

11.382 Retirement of stock upon repayment of loans.

CONSOLIDATION OF ASSOCIATIONS

Sec. 11.1013 Action by directors.
11.1014 Action by members.
11.1015 Completing consolidation.
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VOLUNTARY LIQUIDATION

11.1017 Action by association board of directors.
11.1018 Action by members.
11.1019 Procedure for obtaining consent of Administration.
11.1020 Completing liquidation.
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INVOLUNTARY LIQUIDATION

11.1022 Method of liquidation.
11.1023 Action by bank.
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11.1025 Approval by Administration.
11.1026 Distribution of assets; completing liquidation.
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ELIGIBLE MEMBERS

11.1028 Eligibility determined by location of land.
11.1029 Husband or wife as sole owner.
11.1030 Joint owners.
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11.1033 Voting by proxy.

AUTHORITY: §§ 11.378 to 11.1033 issued under sec. 6, 47 Stat. 14; 12 U. S. C. 665. Statutory provisions interpreted or applied are cited to text.

NOTE: §§ 11.378 to 11.1033 are from Federal Land Bank Manual (section numbers with less than four decimals) and National Farm Loan Association Manual (section numbers with four decimals) and corresponding section numbers in such manuals are included as part of code section number following decimal.

Where the word "bank" appears alone, it refers to a Federal land bank; the word "Corporation" refers to the Federal Farm Mortgage Corporation; the word "association" refers to a national farm loan association; and the word "Administration" refers to the Washington office of the Farm Credit Administration.

CLASSIFICATION OF ASSOCIATIONS

§ 11.378 *Classification of associations.* The banks shall make such review of the financial condition of national farm loan associations as is necessary to ascertain when the capital stock of an association becomes impaired. The stock of an association shall be considered impaired, and the association shall be classified as "impaired," if the total of its liabilities (including estimated losses on contingent liabilities) and capital stock is in excess of its total assets and such excess may not reasonably be regarded, under all circumstances, as negligible in amount or percentage, as apparent rather than real, or as temporary only.

RETIREMENT OF STOCK

§ 11.382 *Retirement of stock upon repayment of loans.* When a mortgage loan through an association with unimpaired stock is paid in full, the bank shall retire its stock outstanding in connection with such loan and shall pay its par value in cash to the association. Upon the retirement of the bank stock, the association shall retire its stock outstanding in connection with such loan and shall pay the full proceeds thereof, less the amount of any claim of the association which

may properly be offset against such stock proceeds, to the owner of, or the holder of a valid assignment of the beneficial interest in, such stock. The bank may, however, pursuant to a general resolution adopted by its board of directors and approved by the Farm Credit Administration, retire its stock and, with the consent of the association, credit an amount equal to the par value thereof as a last payment on the retiring borrower's loan. Before crediting stock of an unimpaired association to the retiring borrower's loan, the bank shall have satisfactory evidence that the person paying off the loan either owns, or holds a valid assignment of the beneficial interest in, stock issued by the association in connection with such loan and the association does not have a valid claim which properly may be offset against the proceeds of such stock upon its retirement.

CONSOLIDATION OF ASSOCIATIONS

AUTHORITY: §§ 11.1013 to 11.1016 interpret or apply sec. 29, 39 Stat. 381, 12 U. S. C. 965.

§ 11.1013 *Action by directors.* The board of directors of each association to be consolidated shall take appropriate action to authorize the execution of a consolidation agreement and articles of association for each association to be created as a result of the agreement. The board may designate one or more of its members to serve with representatives of each of the boards of the other associations involved as an organization committee for the formation of the new association or associations. Each board of directors, or the representatives of each association on the organization committee pursuant to authority by the association board of directors, shall execute on behalf of such associations the agreement of consolidation and articles of association on forms prescribed by the Commissioner and shall appoint not less than five nor more than seven qualified persons to serve as directors for each association to be created as a result of the agreement, who will constitute the board of directors for the period intervening from the date of organization to the date fixed in the bylaws for the first annual meeting of stockholders or until their successors are elected and have qualified.

§ 11.1014 *Action by members.* Meetings of association members shall be called in accordance with the provisions of the bylaws of the association. Notices of the meetings, containing a brief statement of the proposal, shall be mailed to each stockholder of record. A favorable vote of a majority of the members present and voting at each separate meeting shall be necessary for the approval of the proposed consolidation, and such members shall adopt resolutions ratifying and approving the execution of the agreement of the consolidation and articles of association in the name of the association. The secretary-treasurer shall certify to the action taken at the meetings of members, and his certificate shall set out the resolution adopted by the members ratifying the execution of the consolidation agreement.

§ 11.1015 *Completing consolidation.* Upon completion of the association action, one set of organization papers for each association being organized, with the bank's recommendation, and a financial statement for each constituent association and each consolidated association being created as a result of the agreement, shall be submitted to the Commissioner for consideration. Upon approval by the Commissioner, notice of such approval and the effective date of the consolidation will be sent to the bank and each consolidated association, and a charter will be issued to the new association or associations which will be forwarded to the association or associations through the bank. Upon receipt of the approval notice, the bank should provide assistance in transferring all assets in accordance with the consolidation agreement, setting up the new books and establishing such other procedures as may be found necessary. The transfer of assets should be made the day following the effective date of the consolidation, if possible. The secretary-treasurer of each new association should take appropriate action to effect changes in stock issues, and should notify promptly each of the members that the consolidation has been approved. The charters of the constituent associations should be surrendered and sent to the Administration for cancellation. The Administration should be notified by the bank of the completion of the consolidation upon the issuance of new bank stock to the new association or associations in exchange for the stock held by the constituent associations.

§ 11.1016 *Legal reserve.* The legal reserve requirement for the new association or associations at the time of completion of the consolidation shall be the total of the unimpaired legal reserves of the constituent associations.

VOLUNTARY LIQUIDATION

§ 11.1017 *Action by association board of directors.* The board of directors of any association desiring to enter into voluntary liquidation shall develop a complete plan of liquidation setting forth in detail the reasons why it is considered advisable for the benefit and best interests of the association members that the association should be liquidated, containing a current financial statement of the association, and specifically providing:

(a) That the association should be liquidated and its charter canceled;

(b) That all liabilities of the association, including contingent liabilities incurred by the association by reason of its endorsement of mortgages, shall be paid in full, or the payment thereof provided for to the satisfaction of the Administration;

(c) That the amount of contingent liabilities shall be mutually agreed upon by the association and the Federal land bank, but in the event such agreement cannot be reached, the amount of such liabilities shall then be determined by the Administration;

(d) In the event the association does not have sufficient assets to pay all its

liabilities without creating an impairment of its capital stock, the manner in which the necessary funds will be raised; (In this connection an association may by unanimous action of its members levy an assessment on the members in proportion to the amount of stock held by each to raise the required funds, or it may accept voluntary contributions from its members for the purpose of restoring the stock to an unimpaired condition after making provision for all liabilities of the association.)

(e) That funds in an amount equal to the net legal reserve of the association after provision for all its liabilities shall be transferred to the bank of the district;

(f) That the remaining assets of the association, other than its capital stock in the Federal land bank, shall be distributed among its stockholders, or their successors in interest, of record on the books of the association as of the effective date of liquidation, pro rata according to their respective shareholdings;

(g) That the plan of liquidation shall not become effective until consent, in writing, is obtained from the Administration; and

(h) That the effective date of liquidation shall be the date specified by the Administration in the written consent to liquidation.

A copy of such plan shall be submitted to the stockholders of the association as provided in § 11.1018.

§ 11.1018 *Action by members.* A special meeting of the association members shall be called. Notice of the meeting shall be mailed to each stockholder of record at least 20 days prior to the date of such meeting, and shall contain a full statement of the voluntary liquidation proposal or shall have incorporated in it by reference and attached thereto a complete copy of the plan of liquidation developed by the directors of the association. A favorable vote of at least two-thirds of the stockholders of the association, at the special meeting called as herein provided, shall be necessary for the approval of the proposed liquidation. Such approval shall be evidenced by a resolution of the stockholders approving in its entirety the plan of liquidation developed by the directors and authorizing and instructing the officers of the association to do all things necessary to carry into effect the liquidation and render the plan of liquidation effective. The secretary-treasurer shall certify to the action taken at the meeting of the stockholders, and his certificate shall set out the resolution adopted by the stockholders authorizing the liquidation of the association and the fact that the number of stockholders voting for the motion in the assembled meeting constituted at least two-thirds of the stockholders of record of the association on the date of the meeting.

§ 11.1019 *Procedure for obtaining consent of Administration.* Upon completion of the stockholder action, two certified true copies of the resolution and two copies of the plan, together with the charter of the association, should be forwarded to the bank. The association

shall be examined by a farm credit examiner as soon as possible following receipt by the bank of the liquidation plan. After the examination is made, the bank should forward to the Administration one copy of the resolution and plan, together with the charter of the association, and its recommendations in the matter with the supporting reasons for such recommendations. If the Administration consents to the plan, notices of such consent, setting forth the effective date of the liquidation and any other requirements of the Administration, will be sent to the bank and to the association.

§ 11.1020 Completing liquidation. Upon receipt of notice of consent from the Administration, the association shall immediately take the necessary action to liquidate its affairs, as required by the plan of liquidation and the consent thereto. When the necessary action has been completed, evidence thereof in the form required by the Administration in its written consent to the liquidation shall be transmitted to the bank, and, if the bank is satisfied that all requirements of the plan have been carried out, such evidence shall be forwarded to the Farm Credit Administration. If the Administration is satisfied that all liquidation steps have properly been taken, it will advise the bank, and the bank upon receipt of such advice shall cancel the stock held by the association in the bank and thereupon issue its stock to the borrowers through the association pursuant to the provisions of 12 U. S. C. 966. The Administration should be notified when the cancellation and reissuance of stock have been completed by the bank.

§ 11.1021 Disposition of association records. Upon completion of liquidation, the books and records of the association shall be forwarded to the office of the resident farm credit examiner for final examination; provided, however, that upon the written request of the secretary-treasurer of the association, such final examination shall be made at the association's office prior to the release of the books and records by the association. Upon completion of the examination, the books and records will be forwarded to the Administration by the resident farm credit examiner.

INVOLUNTARY LIQUIDATION

§ 11.1022 Method of liquidation. Any association may be liquidated by the retirement by a bank, with the approval of the Administration, of all the stock held by the association in the bank and the retirement of the corresponding shares of stock in the association. In the absence of special circumstances, approval will not be given to a liquidation by this method unless the association has less than 10 members and it appears to the satisfaction of the Administration that the association cannot or will not function and that its continuance will not serve a useful purpose.

§ 11.1023 Action by bank. The board of directors of the bank shall take appropriate action to adopt a resolution requesting approval of the Administration

to pay off at par and retire all stock held by the association in the bank. The resolution should specifically state that, in the judgment of the board, it is advisable for the benefit and best interests of the association members and those engaged in agriculture in the territory of such association that all stock held by the association in the bank and all corresponding shares of stock in the association held by borrowers through it should be retired and the association liquidated. In the event an association is unable to pay its indebtedness in full, the resolution should further state the consideration the bank has given to the enforcement of the liability of the stockholders for the payment of the association's debts and the conclusion reached.

§ 11.1024 Certification by officer of bank. The appropriate bank officer shall certify to the action taken at the meeting of the board of directors, and his certificate shall set out the resolution adopted by the board.

§ 11.1025 Approval by Administration. Upon completion of the board's action, a certified copy of the resolution, accompanied by a detailed statement of facts concerning the condition, operations, and prospects of the association, should be forwarded to the Administration. Upon approval or disapproval of the bank's request by the Administration, notice of such decision will be sent to the bank. Upon receipt of approval notice, the bank shall take the necessary action to pay off at par and retire the stock held by the association in the bank, and when such action has been completed, the bank shall notify the Administration. The Administration will advise the association of the retirement by the bank of its stock.

§ 11.1026 Distribution of assets; completing liquidation. The Administration will advise the association of the retirement by the bank of its stock. Upon receipt of this information the association shall have recorded on its books the retirement of the corresponding stock of the association held by the borrowers; determine by agreement with the bank the amount of contingent liabilities incurred by the association on account of endorsed mortgages and include such amount in the liabilities of the association; apply all assets of the association to the extent necessary to the payment of its liabilities; distribute any remaining assets to its stockholders, or their successors in interest, of record on the books of the association as of the effective date of liquidation, pro rata according to their respective shareholdings; and return the charter of the association to the bank for transmittal to the Administration for cancellation.

§ 11.1027 Examination; disposition of books and records. Upon completion of liquidation, the books and records of the association shall be forwarded to the office of the resident farm credit examiner for final examination: *Provided, however* That upon the written request of the secretary-treasurer of the association, such final examination shall be made at the association's office prior to

the release of the books and records by the association. Upon completion of the examination, the books and records will be forwarded to the Administration by the resident farm credit examiner.

ELIGIBLE MEMBERS

§ 11.1028 Eligibility determined by location of land. A farm owner shall be eligible to membership in the national farm loan association within whose chartered territory any part of the land to be mortgaged is located, regardless of the applicant's place of residence. If the farm to be mortgaged lies within the territory of two or more associations, the applicant shall be eligible to join any one of the associations, but if the lands to be mortgaged are not adjoining, they will be treated as a single farm for loan purposes only if the separate units are under common management and are in such proximity to each other as to constitute practically one operative agricultural unit.

§ 11.1029 Husband or wife as sole owner. When husband and wife both sign a mortgage but one or the other is sole owner, the one in whose name the title stands is the one who is eligible to membership in the association.

§ 11.1030 Joint owners. In cases of joint ownership, each owner who assumes personal liability for a loan must be elected to membership in the association through which the loan is made and the association stock must be issued jointly to all such owners.

§ 11.1031 Livestock corporations. Corporations engaged in the raising of livestock are eligible to become members of national farm loan associations. If a livestock corporation which is eligible for a loan purchases property mortgaged to a land bank it may, with the approval of the bank, assume the mortgage and stock interests of the vendor. If an association approves the application of a livestock corporation, the corporation itself should be elected to membership and the association stock issued in its name. The corporation must authorize, by power of attorney, one of its shareholders to act for it in all association matters. The person so authorized to act for the corporation may be elected a director of the association, provided he is a bona fide resident of the territory within which the association is authorized to do business. The power of attorney referred to should be so drawn that it will continue in full force and effect until the association has received another power of attorney to supersede the old one or until the old power has been revoked.

§ 11.1032 Other corporations. In the event a corporation becomes the purchaser of the mortgaged property, while it may assume the payment of the existing mortgage, it cannot become a member of or an actual stockholder in an association unless it qualifies as engaged in the raising of livestock. However, any corporation may purchase the equity of redemption of the original borrower in such stock and thereby become entitled to any dividends on said stock and ultimately to the proceeds thereof. Stock

that has been so purchased cannot be transferred on the stock certificate book of the association, but the fact that an assignment has been made may be noted on the back of the certificate so that the proceeds, including the dividends, may be paid the person equitably entitled thereto. The original owner, so far as the association is concerned, remains the stockholder whether the purchaser of the equity does or does not agree to assume the liability.

§ 11.1033 *Voting by proxy.* Voting by proxy shall not be permitted at stockholder's meetings of associations unless the proxy holder is (a) the person authorized to act for a livestock corporation owning the stock, (b) a joint owner of the stock, or (c) the husband or wife of the owner of the stock. In the latter case, said husband or wife shall not be eligible to any office in the association.

PART 19—FEES AND CHARGES ON LOANS ASSOCIATION FEES

Sec.

- 19.220 Applications.
- 19.221 Closed loans.
- 19.222 Additional and refunding loans.

BANK FEES

- 19.223 Applications.
- 19.224 Applications on specialized farms.
- 19.225 Appraisals.
- 19.226 Additional and refunding loans.
- 19.227 Divisions of loans.
- 19.228 Nonresident investigations.
- 19.229 Partial releases.
- 19.230 Release of personal liability.
- 19.231 Forebearance agreements.
- 19.232 Reamortizations.
- 19.233 Reinstatement of loans.
- 19.234 Reinstatement of loans after bankruptcy proceedings.

AUTHORITY: §§ 19.220 to 19.234 issued under secs. 11 "Third" 13 "Ninth" 39 Stat. 369, 372, as amended; 12 U. S. C. 761 "Third" 781 "Ninth"

NOTE: §§ 19.220 to 19.234 are from Federal Land Bank Manual and corresponding section numbers in manual are included as part of code section number following decimal.

Where the word "bank" appears alone, it refers to a Federal land bank, all other banks being properly identified by name; the word "Corporation" refers to the Federal Farm Mortgage Corporation; the word "association" refers to a national farm loan association; and the word "Administration" refers to the Washington office of the Farm Credit Administration.

ASSOCIATION FEES

§ 19.220 *Applications.* Associations may collect an association application fee of not more than \$5 in connection with each application: *Provided, however* That the amount of any such fee shall not exceed 1 percent of the amount of the loan applied for. If the property offered as security is subject to any outstanding mortgage loan or loans held by the bank, the Corporation, or both, regardless of the amount stated in the application, the application fee shall be based on an amount applied for which includes the unmatured principal, as of the date of the application, of such outstanding mortgage loan or loans. The application fee may be collected at the time the application is filed. It may be retained by the association regardless of whether the loan is rejected or closed as

a new, additional, or refunding bank loan: *Provided, however* That if no association appraisal is made after a fee provided for in this section has been collected, the amount of such fee shall be refunded.

§ 19.221 *Closed loans.* Except as provided in § 19.222, when a bank loan is closed, associations may collect a closed loan fee in an amount which, when added to the association application fee already collected, will equal but not exceed 1 percent of the amount of the bank loan closed.

§ 19.222 *Additional and refunding loans.* Where, upon the basis of an application in which there is offered as security property which is mortgaged, in whole or in part, to a bank, the Corporation, or both, a bank loan is closed through an association which endorsed the outstanding bank loan, the association may, whether the transaction is completed by way of a supplemental loan or a rewriting of the outstanding loan, collect a closed loan fee which, when added to the association application fee already collected, will not exceed 1 percent of the amount which represents other than unmatured principal of the outstanding bank loan as of the date of the application. Where, upon the basis of such an application, a bank loan is closed through a different association than that which endorsed the outstanding bank loan, or through any association if only a loan held by the Corporation was outstanding, the association may collect a closed loan fee which, when added to the association application fee already collected, will not exceed 1 percent of the amount for which it endorses the bank loan or bank purchase money mortgage.

BANK FEES

§ 19.223 *Applications.* The banks may collect an application fee of not to exceed \$10 on each application.

§ 19.224 *Applications on specialized farms.* In the case of applications for loans (or increased loans or divisions of loans) on specialized farms of certain types, such as turpentine farms, ranches, and orchards, where appraisal costs are unusually high, the banks may establish, subject to the approval of the Land Bank Commissioner, special additional fees in recognition of the higher cost of appraisal of such property.

§ 19.225 *Appraisals.* The fee deposits authorized by these regulations should be retained by the bank if an appraisal is made of the property, but in any such case where an appraisal is not made, the fee should be refunded in its entirety to the applicant. Where a reappraisal is required because of delay of the applicant or is made at his request, the applicant may be required to pay a second fee.

§ 19.226 *Additional and refunding loans.* In connection with applications for additional or refunding loans, whether or not additional security is offered, the bank may require that a fee or not more than \$10 be submitted with the application.

§ 19.227 *Divisions of loans.* A fee of \$5 may be charged in connection with each application for the division of an existing loan.

§ 19.228 *Nonresident investigations.* Where, in connection with an application for a new loan, an increased loan, or the division of an existing loan, it appears necessary for the bank to make a nonresident personal investigation, the applicant may be required to pay a fee of \$7.50, such fee to be refunded in its entirety to the applicant if the investigation is not made.

§ 19.229 *Partial releases.* A fee of \$10 may be charged in connection with each application for a partial release of the mortgaged security, but the fee should be returned to the applicant in its entirety if an appraisal is not made. Provision may be made, subject to the approval of the Land Bank Commissioner, for additional fees in the case of applications for releases in connection with specialized farms.

§ 19.230 *Release of personal liability.* Where, upon transfer of title to the mortgaged property, an application is made for release from personal liability, the bank may require a fee of \$10 in connection with each application, such fee to be refunded in its entirety to the applicant in the event an appraisal of the property is not made.

§ 19.231 *Forebearance agreements.* No fees may be charged in connection with forbearance agreements but borrowers may be charged with direct outlays for determination of title including filing of notarial expense.

§ 19.232 *Reamortizations.* An amount not to exceed actual costs, such as abstract, notarial, recording and necessary incidental items, incurred in connection with a reamortization, may be charged the borrower.

§ 19.233 *Reinstatement of loans.* When a bank or the Corporation has instituted foreclosure or has taken steps necessary preliminary to foreclosure, it may require a borrower who wishes to reinstate such defaulted loan, to reimburse it for any items of actual expense which it legally could include in its foreclosure fee; but no fee may be charged upon a reinstatement for any items of expense which legally could not be included in the foreclosure fee (such as purely collection costs) even though the amount of such outside items is less than the charges which could lawfully be imposed were the foreclosure to be completed.

§ 19.234 *Reinstatement of loans after bankruptcy proceedings.* If under the laws in force in a particular State the bank or Corporation may legally condition its reinstatement of a loan called for foreclosure upon the borrower's paying, or agreeing to pay, reasonable attorney's fees actually incurred in defending proceedings instituted by the borrower under section 75 of the Bankruptcy Act, the collection of these fees from the defaulting borrower may be made a condition of reinstatement. Ro-

appraisal costs may be included in the reinstatement fee.

[SEAL] CARL COLVIN,
Acting Land Bank Commissioner

[F. R. Doc. 53-7141; Filed, Aug. 12, 1953;
8:55 a. m.]

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter B—Farm Ownership Loans

[FHA Instruction 465.2]

PART 372—SECURITY SERVICING AND LIQUIDATIONS; FARM OWNERSHIP LOANS

SUBPART B—TRANSFERS OF FARMS WITH RELEASE FROM PERSONAL LIABILITY

Subpart B, Part 372, Title 6, Code of Federal Regulations (13 F. R. 9462) is revised to read as follows:

Sec.

372.21 General.

372.22 Delegation of authority.

372.23 General terms and conditions relating to farm transfers.

372.24 Other matters affecting preliminary arrangements and closing.

372.25 Preparation of transfer docket in county office.

372.26 Approval and closing of transfers.

AUTHORITY: §§ 372.21 to 372.26 issued under sec. 41 (i), 60 Stat. 1066, sec. 4 (c), 64 Stat. 100; 7 U. S. C. 1015 (i), 40 U. S. C. 442 (c). Interpret or apply secs. 2 (b), 41 (g), 60 Stat. 1063, 1065, sec. 2 (f), 64 Stat. 99; 7 U. S. C. 1001 (note), 1015 (g), 40 U. S. C. 440 (f). Other statutory provisions interpreted or applied are cited to text in parentheses.

§ 372.21 *General.* This subpart prescribes the authorities, policies, and procedures for transfers of Farm Ownership farms to approved applicants, with releases of the transferors from personal liability, in accordance with titles I and IV of the Bankhead-Jones Farm Tenant Act, as amended, and section 2 (f) of the Rural Rehabilitation Corporation Trust Liquidation Act. Also, it provides for extending financial assistance to enable transferees of farms transferred hereunder to pay equity, or to develop or enlarge them into efficient family-type farm-management units.

(a) *Applicability.* Farms which may be transferred under this subpart are those farms which are security for:

(1) Direct loans made from title I funds.

(2) Credit sales of farms pursuant to sections 43 and 51 of the Bankhead-Jones Farm Tenant Act, as approved July 22, 1937, or as amended or Public Law 563, 79th Congress, which are classified under Farm Ownership.

(3) Direct loans or credit sales by a State Rural Rehabilitation Corporation or under transfer agreements with the Secretary of Agriculture, provided there is in effect an agreement entered into between the Government and the State Rural Rehabilitation Corporation or other authority; pursuant to section 2 (f) of the Rural Rehabilitation Corporation Trust Liquidation Act, Public Law 499, 81st Congress, which are classified under Farm Ownership.

(4) Loans made from Loans, Grants, and Rural Rehabilitation funds for farm development (Farm and Home Improvement, Special Real Estate, or Farm Development loans) which are classified under Farm Ownership.

(5) Loans or credit sales of farms by or on behalf of Defense Relocation Corporations and Land Leasing and Land Purchasing Associations, the accounts of which are considered to be Government accounts, and are classified under Farm Ownership.

§ 372.22 *Delegation of authority.* The State Director, subject to the policies and procedures prescribed herein, is hereby authorized to:

(a) Approve the transfer of a Farm Ownership farm.

(b) Modify the terms of contracts, agreements, and other loan instruments held by the Farmers Home Administration.

(c) Release transferors of farms from personal liability with respect to their Farm Ownership indebtedness.

(d) Cause instruments of record to be modified, released, or discharged.

§ 372.23 *General terms and conditions relating to farm transfers—(a) General policies.* The transfer of a farm may be effected provided all of the following conditions exist:

(1) The farm is suitable for use in furtherance of title I and the loan is classified under Farm Ownership.

(2) All the real estate covered by the security instrument will be transferred.

(3) The transferees are eligible for assistance under title I.

(4) The transfer can be consummated on terms under which the transferors will be released from further personal liability with respect to their outstanding Farm Ownership indebtedness when the transaction is closed.

(b) *Elements of transfers.* The transfer of a farm under this subpart will consist of:

(1) A conveyance of the farm by the transferors to the transferees, with the consent of the Farmers Home Administration and subject to the mortgage(s) held by the Farmers Home Administration. Such conveyance will be by warranty deed, executed by the transferors at the time of closing the transaction, on a form prepared or approved by a representative of the Office of the Solicitor. However, if the transferors acquired their title by quitclaim deed from the Farmers Home Administration or its predecessors, a special warranty deed will be used, warranting against title defects arising subsequent to acquisition of the property by the transferors.

(2) The simultaneous assumption by the transferees of personal liability for payment of the entire or an agreed amount of the transferors' outstanding Farm Ownership indebtedness to which the farm is subject. Such assumption of indebtedness will be accomplished through the use of one or more Forms FHA-97, "Agreement for Assumption of Indebtedness," which will be executed by the transferees at the time of closing to evidence the obligations assumed by them and will be executed by the State

Director subsequent to closing to evidence the consent of the Farmers Home Administration to the transaction.

(3) The release of the transferors from further personal liability with respect to their outstanding Farm Ownership indebtedness on terms not more favorable than those recommended by the County Committee. To effect such release, Form FHA-437, "Release from Personal Liability," will be executed by the State Director subsequent to closing for delivery to the transferors. The notes, bonds, or other instruments evidencing the transferors' Farm Ownership obligations will not be surrendered except in cases in which a new note and mortgage are executed by the transferees covering the obligations assumed. The transferors' security instrument(s) will not be released from record, except in a case where a new note and security instrument are executed by the transferees.

(c) *Amount of indebtedness to be assumed.* In all cases, the transferees will assume personal liability for payment of such portion of the transferors' outstanding Farm Ownership indebtedness as does not exceed the value of the property being transferred.

(d) *Value of property to be transferred.* For the purpose of this subpart, the value of the property being transferred will be deemed to be equal to its fair and reasonable value (including any planned improvements) as recertified by the County Committee, less all expenses for improvement or enlargement, or both, to be incurred by the transferees. If any title I loan funds remaining in the transferors' supervised bank account are to be transferred with the farm the amount thereof will be deducted from the expenses mentioned.

(e) *Transferees' interest rate.* The transferees will pay interest on the total amount of the assumed indebtedness, including both unpaid principal and accrued interest, at the same rate(s) charged the transferors under the transferors' instrument(s) of debt. If the amount of the outstanding Farm Ownership indebtedness exceeds the value of the property to be transferred, the transfer may involve financial loss to the Government. In such case, if the transferees are to assume liability for obligations incurred by the transferors which bear different rates of interest, the loss to the Government will be sustained first on the obligation bearing the lower rate of interest. Losses will be taken first on accrued interest and then on principal.

(f) *Transfer involving payment of equity to transferors.* If the value of the property (see § 372.23 (d)) exceeds the amount of the outstanding Farm Ownership indebtedness, the transferees will assume liability for the payment of the full amount of the outstanding Farm Ownership indebtedness, and may pay to the transferors such amount of equity as agreed upon by the transferors and transferees and approved by the State Director.

(1) The amount of real estate equity payment will not exceed the difference between the amount of the outstanding Farm Ownership indebtedness and the

value of the property (see § 372.23 (d)) which is being transferred.

(2) A transfer will not be approved if in connection therewith the transferors and transferees arrange for sale to the transferees of crops or other property for a consideration greater than the fair market value thereof as determined by the State Director.

(3) Any amount paid by the transferees to the transferors for growing crops or for chattels will not be considered as a part of the real estate equity. Any such amount(s) should be paid at the time of closing the transfer; however, the State Director may approve arrangements for payment from the proceeds of crop sales, provided no lien against the real estate will result and the arrangements will not interfere with the transferees' ability to discharge currently the real estate obligations which they assume. In no event will payment for growing crops or chattels be paid from Farm Ownership loan funds.

(4) Settlement in full of the transferors' real estate equity, in the amount approved by the State Director, should be made by the transferees at the time of closing the transfer. If, however, the equity is being paid with subsequent Farm Ownership loan funds, the payment will not be made until the representative of the Office of the Solicitor determines that the subsequent loan is properly secured and advises that the loan funds may be so used. Payments should not be made prior to the date of closing the transfer.

(5) The transferors and transferees must make full disclosure on Form FHA-923, "Certifications Concerning Transfer of Farm Ownership Farm," for consideration by the State Director of the amount to be paid for real estate equity and also the amount(s) to be paid for growing crops or chattels. Any agreements and understandings other than the amount(s) to be paid also will be disclosed in writing and attached to Form FHA-923. Failure to make such disclosures for consideration by the State Director may subject the transferors and transferees, and failure to report any agreement in addition to those evidenced by the transfer docket may subject Farmers Home Administration employees, to prosecution under certain criminal statutes of the United States, including Title 18 U. S. C., sections 1001 and 1014. The County Supervisor is responsible for informing the transferors and transferees regarding these matters.

(6) Payment for the real estate equity will be made by the transferees either with personal funds, other assets, or with the proceeds of a subsequent Farm Ownership loan, or any combination thereof.

(7) Any debt(s), other than the Farm Ownership indebtedness, owed by the transferors to the Farmers Home Administration should be satisfied, to the extent possible, out of any payment(s) made to the transferors in connection with the transfer, and proper arrangements made for payment of any balance(s) remaining unpaid.

(g) *Subsequent loans to transferees.* When required for payment of equity to

the transferors or to develop or enlarge the unit so as to create an efficient family-type farm, a subsequent loan may be made in connection with a transfer in accordance with Part 333 of this chapter and § 372.25 (k). If the unit being transferred represents an asset of a State Rural Rehabilitation Corporation, the subsequent loan must be made from Corporation funds.

(h) *Transferees' payment period.* Obligations assumed by transferees will be retired within the remaining period of time provided in the earliest maturing notes, bonds, or agreements executed by the transferors in connection with their obligations, unless the County Committee recommends that a longer payment period be established for the transferees and the State Director determines that such action is necessary. However, in no case will the State Director approve a payment period for the transferees which exceeds either the shortest period which he deems to be necessary or a period of forty years from the date of Form(s) FHA-97.

(i) *Transferees' first installments.* The transferees' first installment will be made payable on December 31 following the date of Form(s) FHA-97. The payment schedule established in Form(s) FHA-97 will provide as nearly as possible for retirement of the assumed indebtedness through payment by the transferees of equal annual installments. However, if the transferees will not have been in possession of the farm for a full crop year prior to the due date established for the first installment, will not receive the benefits of the crop grown during that year, and will not have other funds with which to pay a full annual installment, the State Director may approve a first installment in such amount (less than an annual installment) as he determines the transferees will be able to pay.

(j) *Transferees' payment plan.* Transferees will be required to make payments in the same manner as new borrowers. Transferees assuming a loan which was approved on or after November 1, 1946, will not be required to execute Form FHA-165, "Variable Payment Agreement." However, if the loan being assumed was approved prior to November 1, 1946, the transferees will be required to execute Form FHA-165, unless they elect the fixed basis for payments.

(Secs. 1 (a), 2 (b), 3 (b), 42 (d), 44 (b), 48, 60 Stat. 1072, 1073, 1074, 1067, 1069, 1070, sec. 1, 62 Stat. 534; 7 U. S. C. 1001 (a), 1002 (b), 1003 (b), 1016 (d), 1018 (b), 1022)

§ 372.24 *Other matters affecting preliminary arrangements and closing—*

(a) *Disposition of Farm Ownership loan funds unexpended by transferors.* Any Farm Ownership loan funds remaining in the supervised bank account of the transferors, to the extent necessary to cover approved expenditures, will be transferred to a supervised bank account established for the transferees at the time of closing the transfer. Any additional Farm Ownership loan funds remaining in the transferors' supervised bank account will be returned as a refund on the transferors' Farm Owner-

ship indebtedness prior to requesting a statement of the transferors' Farm Ownership account from the Area Finance Office.

(b) *Loan funds obligated for transferors.* If funds have been obligated in favor of the transferors for deferred farm development, and such funds have not been advanced, the obligation must be canceled. Withdrawing funds obligated for the transferors for the purpose of making them available to the transferees is prohibited.

(c) *Farm development or enlargement needs.* In each transfer case, consideration will be given to, and provision made for, such farm development or enlargement as is necessary to bring the unit up to minimum Farm Ownership standards. If necessary, a subsequent Farm Ownership loan will be processed in favor of the transferees to complete the planned farm development as reflected in the Farm Development Plan of the transferors or to perform farm development items or enlargement determined at the time of the transfer to be necessary to make the unit an efficient family-type farm. Such a subsequent loan will be processed simultaneously with the transfer.

(d) *Taxes.* Payment of taxes for the year in which the transfer takes place should be considered by the transferors and transferees in making preliminary arrangements regarding terms of the transfer. Any agreement for proration of the tax payment(s) should be noted in Item 9 of Form FHA-922, "Farm Transfer Information." If an agreement is reached to prorate the current year's taxes, the arrangement should provide for a cash payment by the transferors from personal funds to the transferees in the agreed amount at the time of closing.

(e) *Property insurance.* Property insurance in effect in the name of the transferors may be canceled as of the date of transfer and new coverage taken in the name of the transferees, effective the same date. However, arrangements may be made by the transferors and transferees whereby upon conveyance of the property, any unexpired policy of property insurance will be assigned (with the consent of the insurer) to the transferees. Any agreement with respect to assignment of the property insurance should be noted in Item 10 of Form FHA-922, "Farm Transfer Information." Payment by the transferees to the transferors of an agreed amount for assignment of the unexpired property insurance policy will not be paid from Farm Ownership loan funds.

(f) *Rent.* If all or any part of the property is rented at the time of the transfer, arrangements between the transferors and transferees should provide for an equitable disposition of the rents to be collected. Any understanding between them with respect to sharing such rents should be noted in Item 12 of Form FHA-922.

(g) *Collections on pending transfers.* The transferors and transferees must agree that when collections are made between the date of the certified statement of account obtained in connection

with the transfer and the date of closing the transfer, such collections will be scheduled in the name of the transferees. Such an agreement is included in Form FHA-923. With respect to any such collections, Form FHA-37, "Receipt for Payment," will be written in the name of the transferees.

(h) *Title defects.* A supplementary title examination will be required to determine whether any claims against the property have arisen without the approval of the Farmers Home Administration subsequent to recording of the security instruments held by the Farmers Home Administration which secure payment of the obligations being assumed by the transferees. Prior to conveyance, the transferors must remove with personal funds any such claims.

(i) *Transfer expenses.* The transfer of a farm which does not require enlargement ordinarily will involve expenses for supplementary title examination, revenue stamps on the deed if a substantial equity is conveyed, public records search for personal charges against the transferees, and recordation of the transfer deed. Such expenses should be paid by the transferors from personal funds. If circumstances require, they may be paid by the transferees either from personal funds or from a service fee if one is included in a subsequent loan to the transferees.

(j) *Title insurance.* A new policy of mortgagee's title insurance need not be obtained with respect to the land covered by the security instrument(s) held by the Farmers Home Administration unless the representative of the Office of the Solicitor advises that the transaction is such that the existing policy of mortgagee's insurance becomes void. The advantages of an owner's policy should be explained to the transferees, but they should be permitted to elect whether they will procure a new one, pay from personal funds the title company's charges for effecting an assignment of the transferors' owner's policy, or dispense with owner's title insurance. If the farm being transferred is to be enlarged, title clearance on the new tract will be effected.

(k) *Loan limitations.* If a subsequent loan is involved in connection with a transfer, the transferees' investment in the farm will be computed as in the case of an initial Tenant Purchase loan and the loan limitations prescribed in Subpart B, Part 311 of this chapter will be applicable. If no subsequent loan is involved, the loan limitations prescribed in Subpart B, Part 311 of this chapter do not apply in connection with the transfer.

(Secs. 1 (a), 2 (b), 3 (a) and (b), 42 (d), 44 (b), 48, 60 Stat. 1072, 1073, 1074, 1067, 1069, 1070; 7 U. S. C. 1001 (a), 1002 (b), 1003 (a) and (b), 1016 (d), 1018 (b), 1022)

§ 372.25 *Preparation of transfer docket in county office*—(a) *Preliminary arrangements between transferors and transferees.* The transferors and transferees, in collaboration with the County Supervisor, should reach preliminary understandings as to the terms under which they desire to consummate the transfer, taking into consideration Farmers Home

Administration policies applicable to farm transfers. When preliminary arrangements, satisfactory to them and consistent with such policies have been agreed upon, their proposed transaction will be referred to the County Committee for recommendations and certification.

(b) *Tentative transfer date.* In selecting a tentative date for effecting the transfer, reasonable allowance must be made for all foreseeable time requirements, such as time required by the County Committee for its deliberations, procurement of a statement of account, completion of the transfer docket, consideration by the State Field Representative, processing in the State Office, preparation of closing instructions, title clearance, and compliance with closing instructions. Transfers will be closed, if possible, on the actual date designated by the State Director and entered on Form FHA-97. If it is not possible to consummate the transfer on this date, it will be closed as soon thereafter as possible, effective as of the designated date. In no event will the closing be effected prior to the date approved by the State Director and entered on Form FHA-97.

(c) *Computation of equity.* The transferors and transferees may arrive at the amount of equity that the transferees propose to pay to the transferors. However, if the County Supervisor is requested by the transferors or transferees to assist them in arriving at the amount of the transferors' equity he will render such assistance. In arriving at the amount of equity which he would recommend as adequate, the County Supervisor should take into consideration the amount of the outstanding Farm Ownership indebtedness, the available appraisal information, the operational history of the farm since the original loan was made, and any other information available to him. In no event will the transfer be approved if the amount of equity payment exceeds the difference between the amount of the outstanding Farm Ownership indebtedness and the value of the property (see § 372.23 (d)) which is to be transferred.

(d) *Certifications concerning transfer of Farm Ownership farm.* In each transfer case the transferors and transferees will execute an original and one copy of Form FHA-923. If a real estate equity payment is involved, the amount thereof will be entered on Form FHA-923 in the space provided therefor in paragraph numbered 1. In case all or any part of the real estate equity payment is to be made in property, it will be necessary that a determination be made as to the value of such property and the amount(s) thereof will be entered on Form FHA-923 in the spaces provided therefor in paragraph numbered 1. If no equity payment is involved, a zero will be entered in the space provided therefor on Form FHA-923. There will also be entered on Form FHA-923 in paragraphs numbered 2 and 3 any amounts to be paid to the transferors for growing crops and for chattels. If the County Supervisor and State Field Representative agree with the amount of real estate equity and the amount(s)

for growing crops and chattels, if any, reflected on Form FHA-923, they will sign the original of the form in the space for their respective signatures.

(e) *Computation of transferors' outstanding Farm Ownership indebtedness.* The Area Finance Office will prepare a statement of the transferors' account on Form FHA-835, showing separately the date and amount of each advance. The amount of unpaid principal, accrued interest, and daily interest accrual may be shown by totals for advances which bear the same interest rate. The County Committee will be informed of the total amount of the unpaid principal and the amount of interest that will accrue on the transferors' Farm Ownership loan as of the proposed date of transfer.

(f) *Earning capacity reports.* A current earning capacity report will be prepared on Form FHA-596, "Earning Capacity Report," in connection with all proposed farm transfers which involve:

(1) A loss to the Government, unless there is available an earning capacity report which was prepared within one year prior to recertification of the farm by the County Committee, and there have been no significant physical changes in the farm subsequent to preparation of the report.

(2) A subsequent loan to the transferees, provided Part 333 of this chapter requires the submission of a current earning capacity report.

(g) *Review by County Committee.* The County Committee's deliberations will include, among other things:

(1) A determination as to whether the transferees should assume liability for the full amount of the outstanding Farm Ownership indebtedness, considering the amount of the debt (principal and interest) calculated to the proposed date of transfer, and the amount and proposed use of any Farm Ownership loan funds unexpended by the transferors which are being held for transfer to the supervised bank account of the transferees.

(2) Personal examination of the farm.

(3) Review of earning capacity reports, operating records, and Farm Development Plans.

(4) Investigation of the eligibility, including credit resources of the transferees.

(5) Consideration of matters pertinent to releasing the transferors in full from personal liability with respect to their Farm Ownership indebtedness.

(h) *Certification of applicant and farm by County Committee.* If the County Committee desires to recommend transfer of the farm, it will certify with respect to the transferees and the farm on Form FHA-499, "Recertification by County Committee." Form FHA-499 will be completed as follows:

(1) The legal description of the complete farm proposed for acquisition and development by the transferees will be entered in Item 5. Thus, if the farm proposed for transfer is to be enlarged, the farm with respect to which certification is made will include land in addition to that which secures payment of the transferors' indebtedness.

(2) The amount which the County Committee finds to be the fair and reasonable value of the farm described in Item 5, based on its normal earning capacity after contemplated improvements are made, will be entered in Item 6. If a subsequent Farm Ownership loan to the transferees is involved, the amount entered in Item 6 must not exceed the average value of efficient family-type farm-management units in the county, as determined by the Secretary of Agriculture.

(3) Item 7 will be completed if a subsequent loan to the transferees is involved; Items 7 and 9 will be stricken if no subsequent Farm Ownership loan to the transferees is involved.

(4) The County Committee's recommendation as to the amount of the outstanding Farm Ownership indebtedness, which should be assumed by the transferees will be entered in Item 8. If assumption of liability for the full amount outstanding (principal and interest) is recommended, the word "ALL," will be inserted; otherwise, the amount recommended will be entered.

(i) If the transfer involves an equity payment to the transferors, the transferees must assume liability for the full amount of the outstanding indebtedness.

(ii) If no equity payment to the transferors is involved, the transferees will be expected to assume liability for an amount equal to the fair and reasonable value of the farm, based upon its normal earning capacity, as certified in Item 6, less all expenses of enlargement and development to be incurred by the transferees except such expenses as will be paid from any Farm Ownership funds remaining in the transferors' supervised bank account which are approved for transfer with the farm.

(5) If the County Committee believes that the transferees cannot be expected reasonably to retire the real-estate obligations to be assumed within the period of time remaining under the transferors' existing agreement(s) with the Government, the County Committee will recommend the shortest period of time following consummation of the transfer in which the transferees can be expected to retire the obligations. The County Committee will attach to Form FHA-499 a written statement indicating the facts which, in the County Committee's opinion, necessitate extension of the repayment period. If a subsequent Farm Ownership loan is made to the transferees in connection with the transfer, the subsequent loan will be amortized so as to mature within one year of, but not later than, the due date of the final installment under the assumption agreement.

(i) *Release from personal liability.* In connection with all transfers, the County Committee must recommend terms for release of the transferors from personal liability upon closing of the transaction. Such recommendation and certification will be made in a separate signed statement or signed rider which will be attached to Form FHA-499. If the County Committee feels that a certification as to the good faith of the transferors is unwarranted, a transfer at less than the full amount of the out-

standing Farm Ownership indebtedness cannot be approved and, therefore, will not be recommended by the County Committee under this subpart. In such case, a method of liquidation other than transfer will be used.

(j) *Transfer docket.* The transfer docket forms will be prepared in the County Office, and except as otherwise provided by this subpart will include Forms FHA-197, "Application for FHA Services"; FHA-308, "Initial Family Status Report"; FHA-596, "Earning Capacity Report"; FHA-14, "Farm and Home Plan"; FHA-14A, "Long-Time Farm and Home Plan"; FHA-317, "Agreement"; FHA-499, "Recertification by County Committee"; FHA-835, "Certified Statement of Account"; FHA-165, "Variable Payment Agreement"; FHA-923, "Certifications Concerning Transfer of Farm Ownership Farm"; FHA-922, "Farm Transfer Information"; "Recommendation of County Committee for Release of Transferors" and FHA-476, "Transmittal and Flow Sheet."

(k) *Preparation of subsequent loan docket.* If a subsequent Farm Ownership loan is requested in connection with the transfer, the subsequent loan docket will contain all forms which are required in Part 333 of this chapter, except Form FHA-176, "Request for Reamortization of Farm Ownership Loan," Form FHA-493, "Equity Determination and Tract Valuation," and those which are contained in the transfer docket. In such cases, Form FHA-499, "Recertification by County Committee," contained in the transfer docket, will eliminate the necessity of including Form FHA-491, "County Committee Certification," in the subsequent loan docket.

(Secs. 1 (a), 2 (b), 3 (a) and (b), 42 (d), 44 (a) (3), 44 (b), 48, 60 Stat. 1072, 1073, 1074, 1087, 1088, 1089, 1070; 7 U. S. C. 1001 (a), 1002 (b), 1003 (a) and (b), 1016 (d), 1018 (a) (3), 1018 (b), 1022)

§ 372.26 *Approval and closing of transfers—(a) Review by State Field Representative.* The State Field Representative will, in each case in which he considers it necessary, inspect the farm, interview the transferees, and discuss with them their plan of operation. If the State Field Representative recommends the transfer, his recommendations will be entered on Form FHA-476 in the space headed "Comments of Approving Officials." The State Field Representative will sign Form FHA-923 in the space provided therefor, initial his recommendations on Form FHA-476, and forward the docket to the State Director. If he does not recommend the transfer, he will return the docket to the County Supervisor with his comments.

(b) *Actions by State Office.* The State Director will review the docket and other material pertaining to the case and will ascertain whether the transfer should be approved or disapproved. If the State Director agrees with the amount of real estate equity proposed for payment and the amount(s) for growing crops and chattels, if any, he will indicate his approval by signing Form FHA-923, in the space provided therefor. In connection with his review, the State Director will designate the date on which convey-

ance of the farm will take place. The date selected also will be the date on which the transferees will assume personal liability and the transferors will be released therefrom. If the State Director determines the transfer should be approved, he will prepare Form FHA-97 and Form FHA-437. However, in North Carolina and Wisconsin, if the farm represents an asset of the State Rural Rehabilitation Corporation and the proposed transfer is for less than the full amount of the outstanding Farm Ownership indebtedness, the State Director, prior to preparing Form FHA-97 and Form FHA-437, will obtain the written consent of the appropriate officer of the Corporation, which written consent will be placed in the transferees' State Office case folder. If a subsequent Farm Ownership loan to the transferees in connection with the transfer is involved, the State Director will sign the original of Form FHA-668, "Loan Agreement and Request for Funds." The State Director or his delegate will prepare a memorandum to the appropriate representative of the Office of the Solicitor, a copy of which will be forwarded to the appropriate County Supervisor. The memorandum will include:

(1) A full statement of the terms and conditions under which transfer of the farm is to be consummated, including the date assigned by the State Director for conveyance of the property, terms governing release of the transferors from personal liability, terms approved for payment of equity, if any;

(2) A statement of the State Director's determination as to the eligibility of the transferees, including their inability to obtain credit;

(3) An indication of any differences between the transaction as proposed in the county and the transaction as approved by the State Director; and

(4) A request for preparation of necessary legal instruments and closing instructions for use by the County Supervisor.

(c) *Legal review and closing instructions.* Upon receipt and review of the docket, the representative of the Office of the Solicitor, if he approves the proposed transaction as to legality, will prepare closing instructions, and such legal documents as will be required in connection with closing, except those which the closing instructions may indicate are to be prepared by a local attorney, if one is to supervise the closing, and forward them to the County Supervisor. Except in Louisiana, the transferees will not be required to execute a mortgage or other security instrument to secure the obligations covered by assumption agreements. However, if the State Director deems it desirable in particularly complicated cases, he may require a promissory note, bond, mortgage, or other security instrument in addition to Form FHA-97. In Louisiana, the transferees will execute a new mortgage, which will be effective simultaneously with the deed of conveyance, as security for the obligations assumed under the assumption agreement. The transferees also will execute such supplementary evidences of debt as may be necessary

for proper identification of the debt with the new mortgage.

(d) *Closing transfer* The County Supervisor will proceed with closing the transfer, and the subsequent loan if one is involved in connection with the transfer, in accordance with the closing instructions transmitted to him by the representative of the Office of the Solicitor. If for any reason he is unable to do this, he will advise the representative of the Office of the Solicitor before proceeding further. When the transferees have signed the original and one copy of Form FHA-97, the deed of conveyance has been filed for record, and the closing instructions otherwise fulfilled, the County Supervisor will transmit to the representative of the Office of the Solicitor information and documents pertinent to the closing as required by the closing instructions. The County Supervisor will process Form FHA-497, "Notification of First Payment Date," in connection with any subsequent loan. If the representative of the Office of the Solicitor finds that the requirements of the closing instructions have been satisfied properly, he will so certify to the State Director. The State Director then will execute, on behalf of the Government, Form FHA-97 and Form FHA-437. Execution of Form FHA-97 will constitute the State Director's formal approval of the transfer. Form FHA-437 will be delivered to the transferors as evidence of their release from personal liability.

[SEAL] R. B. McLEAISH,
Administrator
Farmers Home Administration.

JULY 31, 1953.

Approved:

TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-7122; Filed, Aug. 12, 1953;
8:51 a. m.]

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

[1953 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 1, Grain Sorghums]

PART 601—GRAINS AND RELATED COMMODITIES

SUBPART—1953 CROP GRAIN, SORGHUMS LOAN AND PURCHASE AGREEMENT PROGRAM

SETTLEMENT

The regulations issued by the Commodity Credit Corporation, (18 F. R. 1969) containing the specific regulations for the 1953-crop grain sorghums price support program are hereby amended as follows:

Section 601.135 (a) (2) is amended by deleting the period at the end thereof, inserting a colon and adding: "Provided, however That if such grain sorghums are sold by CCC in order to determine the market price the settlement value shall not be less than such sales price."

No. 158—3

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. Sup. 714b. Interprets or applies sec. 5, 62 Stat. 1072, cccs. 301, 401, 63 Stat. 1053; 15 U. S. C. Sup. 714c, 7 U. S. C. Sup. 1447, 1421)

Issued this 10th day of August 1953.

[SEAL] HOWARD H. GORDON,
Executive Vice President,
Commodity Credit Corporation.

Approved:

JOHN H. DAVIS,
President,
Commodity Credit Corporation.

[F. R. Doc. 53-7137; Filed, Aug. 12, 1953;
8:54 a. m.]

[1953 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 1, Oats]

PART 601—GRAINS AND RELATED COMMODITIES

SUBPART—1953 CROP OATS LOAN AND PURCHASE AGREEMENT PROGRAM

SETTLEMENT

The regulations issued by the Commodity Credit Corporation (18 F. R. 1973) containing the specific regulations for the 1953-crop oats price support program are hereby amended as follows:

Section 601.160 (a) (2) is amended by deleting the period at the end thereof, inserting a colon and adding: "Provided, however That if such oats are sold by CCC in order to determine the market price the settlement value shall not be less than such sales price."

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. Sup. 714b. Interprets or applies sec. 5, 62 Stat. 1072, cccs. 301, 401, 63 Stat. 1053; 15 U. S. C. Sup. 714c, 7 U. S. C. Sup. 1447, 1421)

Issued this 10th day of August 1953.

[SEAL] HOWARD H. GORDON,
Executive Vice President,
Commodity Credit Corporation.

Approved:

JOHN H. DAVIS,
President,
Commodity Credit Corporation.

[F. R. Doc. 53-7138; Filed, Aug. 12, 1953;
8:54 a. m.]

[1953 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 1, Rye]

PART 601—GRAINS AND RELATED COMMODITIES

SUBPART—1953 CROP RYE LOAN AND PURCHASE AGREEMENT PROGRAM

SETTLEMENT

The regulations issued by the Commodity Credit Corporation (18 F. R. 1979) containing the specific regulations for the 1953-crop rye price support program are hereby amended as follows:

Section 601.210 (a) (2) is amended by deleting the period at the end thereof, inserting a colon and adding: "Provided, however, That if such rye is sold by CCC

in order to determine its market price the settlement value shall not be less than such sales price."

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. Sup. 714b. Interprets or applies sec. 5, 62 Stat. 1072, cccs. 301, 401, 63 Stat. 1053; 15 U. S. C. Sup. 714c, 7 U. S. C. Sup. 1447, 1421)

Issued this 10th day of August 1953.

[SEAL] HOWARD H. GORDON,
Executive Vice President,
Commodity Credit Corporation.

Approved:

JOHN H. DAVIS,
President,
Commodity Credit Corporation.

[F. R. Doc. 53-7139; Filed, Aug. 12, 1953;
8:54 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Docket No. AO-240]

PART 985—MILK IN THE MUSKEGON, MICHIGAN, MARKETING AREA

ORDER REGULATING HANDLING

Sec. 985.0	Findings and determinations.
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985.4	Person.
985.5	Muskegon, Michigan, marketing area.
985.6	Pool plant.
985.7	Handler.
985.8	Producer.
985.9	Producer-handler.
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MARKET ADMINISTRATOR

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REPORTS, RECORDS, AND FACILITIES

985.30	Monthly reports of receipts and utilization.
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CLASSIFICATION

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985.45	Computation of skim milk and butterfat in each class.
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DETERMINATION OF UNIFORM PRICE

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985.60	Handler operating a plant which is not a pool plant.
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BASE RULES

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PAYMENT FOR MILK

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985.83	Payments to the producer-equalization fund.
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ADJUSTMENT OF ACCOUNTS

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APPLICATION OF PROVISIONS

985.100	Milk caused to be delivered by co-operative associations.
985.101	Handler exemption.
985.102	Producer-handler.

TERMINATION OF OBLIGATIONS

985.110	Termination of obligations.
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EFFECTIVE TIME, SUSPENSION, OR TERMINATION

985.120	Effective time.
985.121	When suspended or terminated.
985.122	Continuing obligation.
985.123	Liquidation.

MISCELLANEOUS PROVISIONS

985.130	Agents.
985.131	Separability of provisions.

AUTHORITY: §§ 985.1 to 985.131 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

§ 985.0 Findings and determinations—

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900) a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Muskegon, Michigan, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as and

is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expenses of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of milk from producers and other source milk which is classified as Class I milk.

(b) *Additional findings.* In view of the fact that this order will constitute the original imposition of a regulatory program of this nature for the market, the provisions other than those relating to prices and payments to producers should be put into effect prior to the effective date of the provisions relating to prices and payments to producers, in order that handlers may have opportunity to make necessary adjustments in their accounting and other operational procedures to conform with all provisions of the order. Reasonable time will have been afforded parties to prepare to comply with the aforesaid provisions. It is hereby found and determined, in view of the aforesaid facts and circumstances that good cause exists for making all of the terms and provisions of this order except §§ 985.22 (j) 985.50 through 985.66, 985.80 through 985.84, and 985.86 through 985.91 effective on September 1, 1953 and that it would be contrary to the public interest to delay such effective date beyond that specified.

(c) *Determinations.* It is hereby determined that handlers (excluding co-operative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order which is marketed within the Muskegon, Michigan, marketing area) of more than 50 percent of the milk which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the said marketing area, and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of approval of its issuance and who during the determined representative period (April, 1953) were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Muskegon, Michigan, marketing area shall be in conformity to and in compliance with the following terms and conditions as set forth below.

DEFINITIONS

§ 985.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 601 et seq.)

§ 985.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States, authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 985.3 *U. S. D. A.* "U. S. D. A." means the United States Department of Agriculture.

§ 985.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 985.5 *Muskegon, Michigan, marketing area.* "Muskegon, Michigan, marketing area" referred to in this subpart as the "marketing area" means all territory, including incorporated municipalities, within Muskegon County and within the outer boundaries of the following townships of Ottawa County, in the State of Michigan:

Chester.	Polkton.
Crockery.	Spring Lake.
Grand Haven.	

§ 985.6 *Pool plant.* "Pool plant" means a plant (except one which is exempted pursuant to § 985.101) from which either (1) 20 percent or more of the total milk received at such plant during the month is disposed of in the marketing area as Class I other than to another pool plant, or (2) 20 percent or more of the total milk received from dairy farmers at such plant during the month is moved to a pool plant(s) as described in (1) above.

§ 985.7 *Handler* "Handler" means:

(a) A person who operates a pool plant or a plant in which milk is pasteurized or packaged and from which Class I milk is disposed of in the marketing area.

(b) A cooperative association with respect to milk customarily received by a handler as described under paragraph (a) of this section, which is diverted to a non-handler for the account of the association.

§ 985.8 *Producer* "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, or to any other plant by diversion from a pool plant for the account of a handler.

§ 985.9 *Producer-handler* "Producer-handler" means a person who is a handler and who produces milk, but receives no milk from other producers or from a cooperative association.

§ 985.10 *Other source milk.* "Other source milk" means all skim milk and butterfat in any form received at a handler's plant other than from producers or from a pool plant.

§ 985.11 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers, duly organized as such under the laws of any State, which the Secretary determines:

(a) Is qualified under the standards set forth in the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members; and

(c) Is engaged in making collective sales or marketing milk or its products for its members.

§ 985.12 *Base.* "Base" means a quantity of milk, expressed in pounds per day, determined for each producer as provided in § 985.70.

§ 985.13 *Base milk.* "Base milk" means milk delivered by a producer each month which is not in excess of his base multiplied by the number of days on which milk is delivered during the month, and all milk delivered by a producer prior to February 1, 1954.

§ 985.14 *Excess milk.* "Excess milk" means milk delivered by a producer each month in excess of his base milk.

MARKET ADMINISTRATOR

§ 985.20 *Designation.* The agency for the administration of this subpart shall be a market administrator, selected by the Secretary who shall be entitled to such compensation as may be determined by, and shall be subject to removal by, the Secretary.

§ 985.21 *Powers.* The market administrator shall have the following powers with respect to this subpart:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violation;

(c) To make rules and regulations to effectuate its terms and provisions;

(d) To recommend amendments to the Secretary.

§ 985.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 985.85:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation, and

(3) All other expenses, except those incurred under § 985.86, necessarily incurred by him in the maintenance and

functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided in this subpart, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (1) reports pursuant to § 985.30 and § 935.31, or (2) payments pursuant to § 935.80 and § 985.83;

(g) Calculate a base for each producer in accordance with § 985.70 and advise the producer and the handler receiving the milk of such base;

(h) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(i) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this subpart; and

(j) Publicly announce the prices determined for each month, as follows:

(1) On or before the 5th working day of each month, the minimum class prices for the preceding month computed pursuant to §§ 985.51 and 985.52, and the handler butterfat differential computed pursuant to § 985.53, and

(2) On or before the 11th day of each month the uniform price, the price for base milk and the price for excess milk for the preceding month, computed pursuant to §§ 985.62, 985.63, and 985.64, and the producer butterfat differential computed pursuant to § 985.81.

REPORTS, RECORDS AND FACILITIES

§ 985.30. *Monthly reports of receipts and utilization.* On or before the 5th working day of each month, each handler who operates a pool plant shall report to the market administrator, for the preceding month, in the detail and on forms prescribed by the market administrator, the receipts at his pool plant from each of the following sources and the quantities of butterfat and skim milk contained in such receipts; the utilization of such receipts; and such other information with respect to such receipts and utilization as the market administrator may prescribe;

(a) All producer milk received, including diverted producer milk;

(b) All skim milk and butterfat in any form received from each other handler; and

(c) All other source milk received except any non-fluid milk product which is disposed of in the same form as received.

§ 985.31 *Other reports.* (a) Each producer-handler and each handler who does not operate a pool plant shall make reports at such time and in such manner as the market administrator may request.

(b) On or before the 20th day of each month each handler who received milk from producers shall report his producer payroll for the preceding month which shall show:

(1) The pounds of base milk and pounds of excess milk received from each producer, and the percentage of butterfat contained therein;

(2) The amount and date of payment to each producer, or to a cooperative association; and

(3) The nature and amount of each deduction or charge involved in the payments referred to in subparagraph (2) of this paragraph.

§ 985.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 985.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided, That, if within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records until further written notification from the market administrator.* The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 985.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received at a pool plant (a) in milk from producers or from a cooperative association, (b) in any form from other handlers and (c) in other source milk required to be reported pursuant to § 985.30, shall be classified (separately as skim milk and butterfat) in the classes set forth in § 985.41.

§ 985.41 *Classes of utilization.* Subject to the conditions set forth in §§ 985.42 and 985.43 the classes of utilization shall be as follows:

(a) Class I utilization shall be all skim milk and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, buttermilk, flavored milk, sweet or sour cream, and (2) not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat, (1) used to produce ice cream, ice cream mix, or cottage cheese, whole or skimmed condensed or evaporated milk (sweetened or unsweetened) in bulk or in hermetically sealed cans, cheese, dried whole milk, non-fat

dry milk solids, or butter (2) in actual shrinkage of skim milk and butterfat in milk received from producers, but not to exceed 2 percent of such receipts; (3) in actual shrinkage in other source milk; and (4) in skim milk authorized by the market administrator to be dumped or accounted for as disposed of as livestock feed.

§ 985.42 *Shrinkage.* (a) If producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and in other source milk.

(b) Shrinkage on producer milk shall be computed on that quantity of milk received directly from producers. Shrinkage shall be computed on diverted producer milk at the plant receiving such milk.

§ 985.43 *Transfers.* (a) Skim milk and butterfat disposed of from a pool plant to another pool plant in the form of milk, skim milk or cream shall be Class I utilization unless Class II utilization is indicated by the operators of both plants in their reports submitted pursuant to § 985.30: *Provided*, That in no event shall the amount so classified as Class II be greater than the amount of producer milk used in such class in the pool plant of the transferee handler after allocating other source milk in such plant in series beginning with the lowest priced utilization.

(b) Skim milk and butterfat moved in the form of milk, skim milk or cream from a pool plant to a handler described in § 985.101 or to a plant not a pool plant shall be Class I utilization unless all of the following conditions are met:

(1) Class II utilization is indicated by the operator of the pool plant in his report submitted pursuant to § 985.30.

(2) The operator of such nonpool plant in the month of such movement had actually used an equivalent amount of skim milk and butterfat in Class II, or moved such amount to another nonpool plant which meets the requirements of subparagraph (3) of this paragraph and utilized in the month an equivalent amount of skim milk and butterfat in Class II.

(3) The operator of the nonpool plant maintains books and records which are made available for examination upon request by the market administrator and which are adequate for the verification of such class II utilization.

§ 985.44 *Responsibility of handlers.* All skim milk and butterfat shall be classified as Class I utilization unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 985.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and obvious errors the monthly report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I and Class II utilization for each handler.

§ 985.46 *Allocation of butterfat classified.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage allowed pursuant to § 985.41 (b) (2)

(b) Subtract from the total pounds of butterfat remaining in each class, in series beginning with the lowest-priced utilization, the pounds of butterfat in other source milk;

(c) Subtract from the pounds of butterfat remaining in each class, the pounds of butterfat received from other handlers in such classes pursuant to § 985.43 (a) and

(d) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section;

(e) If the remaining pounds of butterfat in both classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 985.47 *Allocation of skim milk classified.* Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in § 985.46.

MINIMUM PRICES

§ 985.50 *Basic formula price.* The basic formula price to be used in determining the price per hundredweight of Class I utilization shall be the highest of the prices computed pursuant to paragraphs (a) (b) and (c) of this section.

(a) The average of the basic or field prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 per cent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the U. S. D. A..

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Greenville, Wis.
Borden Co., Black Creek, Wis.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Jefferson, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values computed pursuant to subparagraphs (1) and (2) of this paragraph;

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk

creamery butter per pound at Chicago as reported by the U. S. D. A. during the month; subtract 3 cents, add 20 percent thereof and multiply by 3.5.

(2) From the simple average as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the U. S. D. A., deduct 5.5 cents and then multiply by 8.2.

(c) The average of the prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator:

Carnation Milk Co., Sparta, Mich.
Saranac Milk Products Co., Saranac, Mich.
Pet Milk Co., Wayland, Mich.

§ 985.51 *Class I milk price.* (a) The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class I utilization shall be the basic formula price plus \$1.17.

§ 985.52 *Class II Milk Price.* The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 butterfat content received from producers or from a cooperative association, during the month, which is classified as Class II utilization, shall be the price per hundredweight computed pursuant to § 985.50 (c)

§ 985.53 *Handler butterfat differentials.* If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to §§ 985.51 and 985.52 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of one percent that such average butterfat content is below 3.5 percent, an amount equal to the producer butterfat differential, determined pursuant to § 985.81.

DETERMINATION OF UNIFORM PRICE

§ 985.60 *Handler operating a plant which is not a pool plant.* Each handler who operates a plant which is not a pool plant during the month shall pay to the market administrator for the producer equalization fund, on or before the 25th day after the end of such month any amount resulting from the following computation:

(a) Compute an amount equal to the net pool obligation which would be computed pursuant to § 985.61 for milk received from dairy farmers at such plant for such month if such handler operated a pool plant;

(b) Deduct the gross payments, inclusive of any premiums but exclusive of deductions, made by the handler to dairy

farmers for milk received at such plant during such month;

(c) Divide the remainder, if any, by the number of hundredweights of milk received from dairy farmers and utilized for Class I purposes: *Provided*, That in no event shall the resulting amount per hundredweight exceed the difference between the Class I and Class II prices; and

(d) Multiply the amount per hundredweight determined pursuant to paragraph (c) of this section by the number of hundredweights of Class I milk disposed of from such plant in the marketing area.

§ 985.61 *Computation of value of producer milk for each handler* The value of producer milk received during the month by each handler who operates a pool plant shall be a sum of money computed by the market administrator by multiplying by the applicable class price, adjusted pursuant to § 985.53, the total combined hundredweight of skim milk and butterfat received from producers allocated to each class pursuant to § 985.46 and § 985.47, adding together the resulting amounts, and if such handler has a utilization greater than has been accounted for as received from all sources, add an amount computed by multiplying any such excess utilization classified pursuant to § 985.46 (e) and § 985.47 by the applicable class prices.

§ 985.62 *Computation of the 3.5 percent value of all producer milk.* For each month, the market administrator shall compute the 3.5 percent value of producer milk by—

(a) Combining into one total the individual values of milk of all handlers computed pursuant to § 985.61, adjusted by any charges or credits pursuant to § 985.90 (a) and (b)

(b) Adding, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtracting if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 985.81 multiplied by 10.

(c) Adding not less than one-half of the unobligated balance in the producer-equalization fund.

§ 985.63 *Uniform price.* For each month the uniform price shall be computed by— (a) Dividing the amount computed pursuant to § 985.62 by the hundredweight of milk received from producers represented by the values included in § 985.62 (a) and (b) subtracting not less than 6 cents or more than 7 cents.

§ 985.64 *Excess milk price.* For each month the excess milk price shall be the price of Class II utilization determined pursuant to § 985.52, rounded off to the nearest full cent.

§ 985.65 *Computation of the base milk price.* (a) Multiply the total pounds of excess milk and milk to be paid for at the excess milk price pursuant to § 985.70 (b) by the excess milk price for the month.

(b) Multiply the total amount of milk to be paid for at the uniform price by the uniform price for the month.

(c) Subtract the total values arrived at in paragraphs (a) and (b) of this section from the total 3.5 percent value of all producer milk arrived at in § 985.62;

(d) Divide the resultant value by the total hundredweight of base milk and milk to be paid for at the base price pursuant to § 985.70 (b), and

(e) Subtract not less than 4 cents nor more than 5 cents. The resultant hundredweight price shall be the price of base milk of 3.5 percent butterfat content received at pool plants described in § 985.6.

§ 985.66 *Notification.* On or before the 12th day after the end of each month the market administrator shall notify each handler of:

(a) The amounts and values of his milk in each class and the total of such amounts and values;

(b) The base of any producer delivering milk to the handler which was not used in making payments for the previous month;

(c) The amount due such handler from the producer-equalization fund or the amount to be paid by such handler to the producer-equalization fund, as the case may be; and

(d) The totals of the minimum amounts to be paid by such handler pursuant to §§ 985.80, 985.83, 985.85, 985.86, and 985.90.

BASE RULES

§ 985.70 *Determination of base.* (a) A producer who delivered milk on at least 122 days during the period August 1 through December 31, inclusive, shall have a base computed by the market administrator to be applicable, subject to paragraph (c) of this section, for the 12 months' period beginning the following February 1, equal to his daily average milk deliveries from the date on which milk was first delivered in the period to the end of such period: *Provided*, That a producer who had a base previous to August 1, and whose average of daily deliveries for the August 1–December 31 period is less than such base shall have a base computed by subtracting from his previous base any amount by which 90 percent of his previous base exceeds such average of daily deliveries.

(b) A producer who has no base by reason of having delivered less than 3 full months shall be paid, until such time as he has been a producer 3 full months, the uniform price in each of the months of August through December and in other months the price applicable to base milk for the following percentages of his milk deliveries and the price applicable to excess milk for the remainder of his deliveries: 75 percent for January and February, 70 percent for March, 60 percent for April and July, and 40 percent for May and June. At the conclusion of the first 3 full months' delivery a base shall be established in the following manner: Multiply the total deliveries in the months of August through December by 0.8, in January and February by 0.75, in March by 0.7, in April and July by 0.6, and in May and June by 0.4. Add the

amounts so computed and divide by the number of days in which milk was delivered during the three months.

(c) A producer with a base, by notifying the market administrator that he relinquishes such base, may establish a new base pursuant to paragraph (b) of this section once during the 12-month period ending December 31, the period for establishing a new base to begin the first day of the month in which such notification is received by the market administrator.

(d) From the effective date of the subpart until bases are established pursuant to this section, all milk delivered by producers shall be considered to be base milk.

(e) From August 1, 1953, to the effective date hereof, deliveries of milk by a producer may be certified for the purpose of establishing a base hereunder by submitting delivery receipts or other evidence satisfactory to the market administrator.

§ 985.71 *Application of bases.* (a) A base shall apply to deliveries of milk by the producer for whose account milk was delivered during the base period and upon death may be transferred to a member or members of the deceased producer's immediate family.

(b) Bases may be transferred under the following conditions upon written notice by the holder of the base to the market administrator on or before the last day of the month that such base is to be transferred:

(1) Upon retirement or entry into military service of a producer, the entire base may be transferred to a member or members of his immediate family.

(2) Bases may be held jointly and if such joint holding is terminated the bases may be transferred as specified in writing to the market administrator.

(c) A producer who does not deliver milk to a handler for 45 consecutive days shall forfeit his base.

PAYMENT FOR MILK

§ 985.80 *Time and method of payment.* On or before the 15th day after the end of each month each handler who received milk from producers or from a cooperative association shall pay for milk received during such month to each producer, or to a cooperative association for milk received from producers for the account of such association, the uniform price as provided in § 985.70 (b) or the base price for base milk and for milk to be paid for at the base price pursuant to § 985.70 (b) and the excess price for excess milk and milk to be paid for at the excess price pursuant to § 985.70 (b) adjusted by the butterfat differential pursuant to § 985.81. *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 985.84 he shall not be deemed to be in violation of this section if he reduces uniformly to all producers and cooperative associations his payments per hundredweight by a total amount not in excess of the reduction in payments due from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on

or before the date for making payments pursuant to this section next following that on which such balance of payment is received from the market administrator.

§ 985.81 *Producer butterfat differential.* In making payments pursuant to § 985.80, the uniform price, base price and excess price shall be increased or decreased for each one-tenth of one percent of butterfat content in the milk received from each producer or a cooperative association above or below 3.5 percent, as the case may be, by a butterfat differential of 7 cents when the average price of butter as described in § 985.50 (b) (1) is 60 cents, which differential shall be increased one-half cent for each full 5 cents variance in such price of butter above 60 cents and decreased one-half cent for each full 5 cents variance in such price of butter below 64.99 cents.

§ 985.82 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to § 985.83 and out of which he shall make all payments pursuant to § 985.84.

§ 985.83 *Payments to the producer-equalization fund.* (a) On or before the 13th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 985.61 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 985.80.

(b) On or before the 25th day after the end of each month each handler who is required to make payment pursuant to § 985.60 shall pay such amount to the market administrator.

§ 985.84 *Payments out of the producer-equalization fund.* On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 985.61 is less than the total minimum amount required to be paid by him pursuant to § 985.80, less any unpaid obligations of such handler to the market administrator pursuant to § 985.83: *Provided*, That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 985.85 *Expense of administration.* As his pro rata share of the expense of administration of this subpart, each handler shall pay to the market administrator on or before the 13th day after the end of each month four cents per hundredweight, or such amount not exceeding four cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of milk from producers and to other source milk which is sold in the marketing area as Class I.

§ 985.86 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 985.80 for milk received from each producer at a plant not operated by a cooperative association of which such producer is a member, shall deduct seven cents per hundredweight, or such amount not exceeding seven cents per hundredweight as the Secretary may prescribe, with respect to all such milk received during the month and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 985.80 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

ADJUSTMENT OF ACCOUNTS

§ 985.90 *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due:

(a) To the market administrator from such handler,

(b) To such handler from the market administrator, or

(c) To any producer or cooperative association from such handler, the market administrator shall notify such handler promptly of any such amount due; and payment thereof shall be made on or before the next date, following the 5th day after such notice, for making payment set forth in the provision under which such error occurred.

§ 985.91 *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 985.83, 985.85, 985.86, and 985.90 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

APPLICATION OF PROVISIONS

§ 985.100 *Milk caused to be delivered by cooperative associations.* Milk referred to in this subpart as received from producers by a handler shall include milk of producers caused to be delivered to such handlers by a cooperative association.

§ 985.101 *Handler exemption.* A handler who operates a plant located outside the marketing area from which an average of less than 300 points (one point being defined as one-half pint of cream or one quart of any other Class I product) of Class I milk per day is disposed of during the delivery period on a route(s) operating wholly or partly within the marketing area, or a handler whom the Secretary finds is subject, during the delivery period, to another Federal order and whose disposition of Class I milk in the other Federal marketing area exceeds that in the Muskegon marketing area, shall be exempted for such delivery period from all provisions of this subpart except §§ 985.31, 985.32, and 985.33.

§ 985.102 *Producer-handler.* A producer-handler shall be exempt from all provisions of this subpart except that he shall make reports to the market administrator at such time and in such manner as the market administrator may request.

TERMINATIONS OF OBLIGATIONS

§ 985.110 *Termination of obligations.* (a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or associations, or, if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books or records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this subpart to pay money shall not be terminated with respect to any transaction involving

fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 985.120 *Effective time.* The provisions of this subpart, or of any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 985.121 *When suspended or terminated.* The Secretary shall, whenever he finds that this subpart, or any provision of this subpart, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or any such provision of this subpart.

§ 985.122 *Continuing obligation.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 985.123 *Liquidation.* Under the suspension or termination of the provisions of this subpart, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 985.130 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 985.131 *Separability of provisions.* If any provision of this subpart, or the application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this subpart, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 7th day of August 1953, to be effective as follows: §§ 985.0 through 985.22 (i), 985.30 through 985.47, 985.70 and 985.71, 985.85, and 985.100 through 985.131 shall be effective on and after September 1, 1953, and all of the remaining terms and provisions of this order (§§ 985.22 (j) 985.50 through 985.66, 985.80 through 985.84, and 985.86 through 985.91) shall be effective on and after October 1, 1953.

[SEAL]

E. T. BENSON,
Secretary of Agriculture.

[F. R. Doc. 53-7140; Filed, Aug. 12, 1953;
8:55 a. m.]

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce

Subchapter C—Office of International Trade
[6th Gen. Rev. of Export Regs., Amdt. 59¹]

PART 368—MUTUAL ASSISTANCE ON U. S. IMPORTS AND EXPORTS (AS APPLIED TO SELECTED U. S. IMPORTS)

PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

PART 382—DENIAL OR SUSPENSION OF EXPORT PRIVILEGES

MISCELLANEOUS AMENDMENTS

1. Section 368.1 *Import certificate and delivery verification on selected imports into the United States* paragraph (e) *Penalties for false statements* is amended to read as follows:

(e) *Penalties and administrative action—(1) False statements.* The U. S. Code, Title 18 (Crimes and Criminal Procedure) section 1001, formerly section 80, makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Maximum penalties under this provision are \$10,000 fine or imprisonment for 5 years, or both.

(2) *Shipments violating import certificate agreement.* Any person who causes or attempts to cause diversion,

transshipment, or reexportation of commodities contrary to his representations made on Form IT-826, Import Certificate, is subject to disqualification from eligibility to obtain certified import certificates from the Department of Commerce.

2. Section 373.39 *Applicability of multiple commodity group provisions to Commodity Group 6 commodities* paragraph (d) *Past participation in exports* is amended in the following particulars:

a. Delete the heading of subparagraph (1) "(1) Certain commodities with processing code NONE" The remainder of the subparagraph remains unchanged.

b. Delete subparagraph (2) *Cobalt dental alloys, Schedule B No. 664526 (formerly 664529 and 915590)*

3. Section 373.44 *Totally allocated commodities* is deleted.

4. Section 373.48 *Applicability of multiple commodity group provisions to Commodity Group 7 commodities* paragraph (d) *Past participation in exports* is deleted.

5. Section 373.55 *Chemicals and medicinal products* paragraph (c) *Cobalt-containing products* is amended by the addition of a new subparagraph (2) to read as follows:

(2) Applicants for licenses to export combustion catalysts containing cobalt, Schedule B No. 829990, must certify on the face of the application, Form IT-419, as follows:

The materials described on this application are made from scrap or waste materials not suitable for metallurgical use.

The present paragraph (c) is designated subparagraph (1).

6. Section 373.71 *Supplement 1, Time schedules for submission of applications for licenses to export certain Positive List commodities* is amended by deleting therefrom the following entry and related submission dates:

Dept. of Commerce Schedule B No.	Commodity	Submission dates	
		Second quarter 1953	Third quarter 1953
664526	Cobalt dental alloys...	Mar. 30-Apr. 13, 1953.	June 29, 1953.

7. Section 382.51 *Table of compliance orders currently in effect denying export privileges* paragraph (b) *Table of compliance orders* is amended in the following particulars:

a. The following entries are added:

Name and address	Effective date of order	Expiration date of order	Export privileges affected	FEDERAL REGISTER citation
Atlantic & Pacific Wire & Cable Co., Inc., 112-01 Northern Blvd., East Elmhurst, Long Island, N. Y.	7-17-53	7-17-54	General and validated licenses, all commodities, any destinations.	18 F. R. 4245, 7-23-53.
Lerauri, Vicente, 814 Cortlandt Ave., Bronx, N. Y.	7-17-53	4-17-54do.....	18 F. R. 4245, 7-23-53.
Limantour, Julio, 10 East 61st St., New York, N. Y.	7-17-53	4-17-54do.....	18 F. R. 4245, 7-23-53.
Oboler, Martin, 112-01 Northern Blvd., East Elmhurst, Long Island, N. Y.	7-17-53	7-17-54do.....	18 F. R. 4245, 7-23-53.
Rubin, Irving, 112-01 Northern Blvd., East Elmhurst, Long Island, N. Y.	7-17-53	7-17-54do.....	18 F. R. 4245, 7-23-53.

¹ This amendment was published in Current Export Bulletin No. 710, dated August 6, 1953, and in the reprint pages, dated August 6, 1953.

b Certain entries presently in the table are modified to read as follows:

Name and address	Effective date of order	Expiration date of order	Export privileges affected	FEDERAL REGISTER citation
Arciniega O. P. O. Box 931, Calatco Chilly, and 170 Calle Azteca Mexi cali, B O Mexico	7-17-53	Until completion of administrative proceedings	General and validated licenses, all commodities, any destination; also exports to Canada	18 F. R. 4360, 7-24-53
Bonavente y Arciniega, S. de R. L., 170 Calle Azteca Mexicali B O Mexico	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53
Bonavente-Acosta, Rafael (also uses the following names: Rafael or Ray Bonavente or Bonaventis), P O Box 931 Calatco, Calif., and 170 Calle Azteca Mexicali B O Mexico	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53
Fajardo-Duarte Francisco Mexicali B O Mexico	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53
Gonzalez Goya, Rafael, care Ignacio Grande Mexicali B O Mexico.	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53
Hidalgo, Botica 170 Calle Azteca, Mexicali B O Mexico	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53
Penilla Yopliz Jesus 607 Aguascalientes Ave Mexicali, B O Mexico	7-17-53	do	do	18 F. R. 2062, 5-22-53; 18 F. R. 4360, 7-24-53

This amendment shall become effective as of August 6, 1953

(Sec 3, 63 Stat 7; 65 Stat 43; 67 Stat. 62; 50 U S. O App. Sup 2023 E O 9630, Sept 27 1945, 10 F R 12245 3 CFR, 1945 Supp.; E. O 9819 Jan 3 1948 13 F R 59 3 CFR, 1948 Supp.)

LORING K MACY,
Director,
Office of International Trade
[F R Doc 53-7127; Filed Aug 12 1953; 8:52 a m.]

[6th Gen Rev of Export Regs Amdt 58]
PART 371—GENERAL LICENSES

SHIPMENTS OF LIMITED VALUE GLV
Section 371.10 Shipments of limited value GLV paragraph (c) General provisions is amended in the following particulars:

1 Subparagraph (1) Positive List is amended to read as follows:

(1) Positive List Subject to the special provisions as designated and set forth below in this section, commodities included on the Positive List of Commodities (§ 399.1 of this subchapter) may be exported in a single shipment under this general license to all destinations, as follows:

(i) R destinations RO or R commodities, classified in a single entry on the Positive List may be exported to Group R destinations: Provided, That the net value of the shipment is within the dollar-value limit specified in the column headed 'GLV Dollar Value Limits'
(ii) O destinations RO commodities, classified in a single entry on the Positive List may be exported to Group O destinations: Provided, That the net value of the shipment is within the dollar-value limit specified in the column headed 'GLV Dollar Value Limit' (including those limits specified as "none") or \$500, whichever is higher, unless the commodity is identified by the symbol 'G' in the column headed 'Commodity Lists.' Where the commodity is identified by the symbol 'G', the commodity may be exported only within the dollar-value limit specified in the column headed 'GLV Dollar Value Limits'

2 Subdivision (iii) of subparagraph (2) Prohibited shipments is amended to read as follows:

(iii) Commodities with the word 'none' in the column in the Positive List headed 'GLV Dollar Value Limits', except as specified in subparagraph (1) of this paragraph.

3 Subparagraph (3) Asterisk is deleted.

This amendment shall become effective as of August 13 1953

(Sec 3 63 Stat 7; 65 Stat 43; 67 Stat 62; 50 U S. O App. Sup 2023 E O 9630, Sept 27 1945, 10 F R 12245 3 CFR, 1945 Supp.; E. O 9819 Jan 3 1948 13 F R 59 3 CFR, 1948 Supp.)

LORING K MACY
Director,
Office of International Trade
[F R Doc 53-7125; Filed Aug 12 1953; 8:51 a m.]

[6th Gen Rev. of Export Regs Amdt P L 50]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

MISCELLANEOUS AMENDMENTS
Section 399.1 Appendix 4—Positive List of Commodities is amended in the following particulars:

Dept. of Commerce Schedule No	Commodity
481500	Fine paper; tissue; electrical insulating tissue; cell paper; electrolytic condenser tissue, kraft; kraft con capacitor tissue; other paper for dielectric use coated or uncoated
482700	Special electrical paper; electrical insulating paper; cable winding paper; electrical insulating paper other than cable filling; electrical; cable, paper stock; coated or uncoated
489000	Paper, paperboard, and products, n. e. c. (specify by name): Cable paper; electrical paper and cloth, gummed; paper sleeve; treated; rope paper tape, electrical insulating; and paper paperboard and tissue for dielectric use coated or uncoated n. e. c.
540905	Abrasives: Diamond grinding wheels, sticks, hones and laps (specify carat weight of contained diamonds) (report loose industrial diamonds in 590005; diamond powder or dust, including compounds in 640010)
590012	Cryolite, natural and artificial (specify grade): Scrap, except tin plated and tinned plate scrap
601010	Melting steel scrap (No. 1 heavy and No. 2)
601040	Isolated sheet melting scrap
601050	Boilings, shovels and turnings (steel melting scrap)
601070	Iron scrap
601090	Other scrap (specify type)
601120	Tin plated scrap (not defined or semidefined) (include scrap for recovery of tin), except tin cans old, crushed (report defined, semidefined, or rusted scrap in 601040 and 601050)
601170	Revolving material (report relaying rails in 605300)
610039	Welding rods and wires: Nickel and nickel alloy (specify by name and metal content)
610039	Metal powders: Nickel flakes
610159	Nickel-chrome boron powder
610159	Nickel powder
610159	Selenium (specify selenium content and type of metal): Other metals, except precious (specify by name and type of metal):
610159	Ferrocolumbium tantalum (specify alloy content)
610159	Ferrocolumbium (specify columbium content)
610159	Nickel ore, concentrates, and matte
610159	Nickel metal in ingots, bars, rods, sheets, strips, and other crude forms, including scrap (report nickel alloy metals in ingots, bars, rods, sheets, strips, and other crude forms including scrap (report nickel alloy metals in 64900-645000))
610159	Nickel-chrome electric resistance wire, except insulated (report insulated wire in 703010-703039)
610159	Nickel and nickel alloy semilaminated forms n. e. c. (specify by name and nickel content) (report copper-nickel wire in 645710)
610159	Cobalt: Cobalt dental alloys
610159	Ores, concentrates, metal, and other alloys in crude form, and cobalt bearing scrap metal (include cobalt scrap containing 5 percent or more cobalt by weight)
64525	Semilaminated forms n. e. c. (specify by name)
64525	

1 General Notes to Appendix A paragraph (h) Explanation of symbols in column headed 'Commodity Lists' is amended by the addition of the following entry:

Sym bol	Special requirement referred to—	Section
G	Commodities excepted from provisions of general license GLV for group O countries	371 10

2 The letter "G" is inserted in the column headed "Commodity Lists" opposite the following commodities to indicate that those commodities may be exported only within the dollar-value limit specified in the column headed "GLV Dollar Value Limits" (see § 371.10 (c) of this subchapter):

16th Gen Rev of Export Regs Amct P L 51-1

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

MISCELLANEOUS AMENDMENTS

Section 399 1 Appendix A—Positive List of Commodities is amended in the following particulars:
The following commodities are deleted from the Positive List:

Dept. of Com merce Schedule B No	Commodity
800012	Raymond mill dust ¹
	Ammonium compounds, except fertilizers and fertilizer materials in 800000-800100;
830000	Ammonium phosphates, n. o. o. (specify by name);
	Ammonium phosphate,
830000	Nitrogenous fertilizer materials (report nitrogenous phosphate types in 831000, 834000);
	Nitrogenous chemical materials;
830000	Nitrogenous fertilizer materials, n. o. o., except urea *
831001	Phosphatic fertilizer materials;
	Normal (standard) superphosphate, containing not more than 25% available phosphoric acid (state percentage of P ₂ O ₅);
831000	Concentrated superphosphate, containing more than 25% available phosphoric acid (state percentage of P ₂ O ₅);
832000	Potassium chloride (state percentage of K ₂ O)
833100	Potassium sulfate,
834100	Nitrogenous phosphate types;
834000	Ammonium phosphates (state percentage of N and P ₂ O ₅);
835100	Nitrogenous phosphate types, n. o. o. (specify by name and state percentage of N, K ₂ O, and P ₂ O ₅);
	Prepared fertilizer mixtures (specify by name and state percentage of N, K ₂ O, and P ₂ O ₅)

* By this amendment the entry on the Positive List under Schedule B No. 830012 is revised to read as follows: "Cryolite, natural and artificial, except Raymond mill dust (specify grade)."
* By this amendment the entry on the Positive List under Schedule B No. 830000 is revised to read as follows: "Urea (report urea for industrial use in 830000)."

This amendment shall become effective as of 12:01 a. m., August 6, 1953
(Sec 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 63; 50 U. S. O App. Supp. 2023 E. O. 9630, Sept. 27, 1946, 10 F. R. 12346, 3 CFR, 1946 Supp.; E. O. 9910, Jan. 3, 1948, 13 F. R. 69, 3 CFR, 1948 Supp.)

Lois K. Macy,

Director,

Office of International Trade

[F. R. Doc 53-7129; Filed, Aug. 12, 1953; 8:53 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XXIII—Defense Materials Procurement Agency

[Mineral Order 7, as Amended]

MO-7—SERIALIZATION OF MINES, SMELTERS, AND MINERAL PROCESSING PLANTS

REVOCATION

Mineral Order 7, as amended (17 F. R. 4852) is hereby revoked

Dated: August 7, 1953

Irving Gummel,

Acting Deputy Administrator

* This amendment was published in Current Export Bulletin No. 710, dated August 6, 1953, [F. R. Doc 53-7129; Filed, Aug. 12, 1953; 8:53 a. m.]

Dept. of Com merce Schedule B No	Commodity
604530	Columbium or niobium: Ores and concentrates
604560	Tungsten: Ores and concentrates (report also in 604003).
604003	Nonferrous metals and alloys in crude form, scrap, and semifabricated forms, n. o. o. (specify by name):
	Selenium metal (specify selenium content and grade)
812100	Biotite (all forms); Selenium-globulin, human (immune serum globulin, polynucleotide immune globulin, etc)
830750	Metals of organic compounds, except paint and varnish driers (specify by name):
830760	Metals of organic compounds, except paint and varnish driers (specify by name):
830900	Other industrial chemicals:
	Selenium salts and compounds, including selenium dioxide (specify selenium content)
842000	Chemical pigments, n. o. o.:
842000	Cobalt-containing pigments,
843000	Selenium-containing pigments (specify selenium content).
843000	Other cobalt-containing paint and varnish driers in paste and solution form
843000	Cobalt telluride,
843000	Military apparel of all types and materials (new and used), except: underwear and under garments; etc

3 The following revisions are made in commodity descriptions:

Dept. of Com merce Schedule B No	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required	Commodity class
010123	Metal powders:					
010123	Cobalt:.....	Lb	NONE	25	RO	BDG
	Nonferrous metals and alloys in crude form, scrap, and semifabricated forms, n. o. o. (specify by name):					
040033	Titanium dioxide, thermomental, and thermomental wire and cable:	Lb	MINI	None	RO	ADG
700033	Nickel-chrome electric resistance wire, insulated:	Lb	NONE 17	100	RO	BG

* The above entry is added separately to the Positive List under Schedule B No. 010150. This commodity is presently included on the Positive List under the last entry for Schedule B No. 010150. The effect of this revision is to indicate that this commodity may be exported only within the dollar value limit specified in the column headed "GLV Dollar Value Limits" (see § 371.10 (c) of this subchapter).

* The above entry is added separately to the Positive List under Schedule B No. 040038. These commodities are presently included in the Positive List under the last entry for Schedule B No. 040038. The effect of this revision is to indicate that these commodities may be exported only within the dollar value limit specified in the column headed "GLV Dollar Value Limits" (see § 371.10 (c) of this subchapter).

* The above entry is added separately to the Positive List under Schedule B No. 700035. This commodity is presently included on the Positive List under the entry for Schedule B No. 700035. The effect of this revision is to indicate that this commodity may be exported only within the dollar-value limit specified in the column headed "GLV Dollar Value Limits" (see § 371.10 (c) of this subchapter).

This amendment shall become effective as of August 13, 1953

(Sec 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 63; 50 U. S. O App. Supp. 2023 E. O. 9630, Sept. 27, 1946, 10 F. R. 12346, 3 CFR, 1946 Supp.; E. O. 9910, Jan. 3, 1948, 13 F. R. 69, 3 CFR, 1948 Supp.)

Lois K. Macy,

Director,

Office of International Trade

[F. R. Doc 53-7124; Filed, Aug. 12, 1953; 8:51 a. m.]

TITLE 32—NATIONAL DEFENSE**Chapter VII—Department of the Air Force****Subchapter J—Procurement Procedures****PART 1006—CONTRACT FORMS AND CLAUSES**

Part 1006 is added to Subchapter J as follows:

Sec.	
1006.1	Scope of part.
1006.2	Effect of Armed Services Procurement Regulation.
1006.3	Supplementary instructions.
1006.4	Deviations.

SUBPART A—FIXED-PRICE SUPPLY CONTRACTS

1006.101	Scope of subpart.
1006.102	Contracts in excess of \$1000.
1006.103	Contracts with Canadian Commercial Corporation.
1006.104	Indefinite quantity contracts.
1006.105	Contracts for \$1000 or less.

SUBPART B—COST-PLUS-A-FIXED-FEE CONTRACTS

1006.201	Scope of subpart.
1006.202	Cost-plus-a-fixed-fee supply contracts.
1006.203	Cost-plus-a-fixed-fee service contracts.
1006.204	Cost-plus-a-fixed-fee open contracts.

SUBPART C—FIXED-PRICE CONTRACTS FOR RESEARCH AND DEVELOPMENT

1006.301	General.
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SUBPART D—FIXED-PRICE SERVICE CONTRACTS

1006.401	Scope of subpart.
1006.402	Nonpersonal service contracts.
1006.403	Personal service contracts.
1006.404	Contracts with German and Austrian Nationals (Paperclip).
1006.405	Contracts for technical representative services.

SUBPART E—TIME AND MATERIALS CONTRACTS

1006.501	Scope of subpart.
1006.502	Contract clauses.

SUBPART F—CONSTRUCTION CONTRACTS

1006.601	Scope of subpart.
1006.602	Contract clauses.

SUBPART G—SALES CONTRACTS

1006.701	General.
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SUBPART H—BAILEMENT CONTRACTS

1006.801	General.
1006.802	Contract clauses.

SUBPART I—FACILITIES CONTRACTS

1006.901	General.
1006.902	Contract clauses.

SUBPART J—LETTER CONTRACTS

1006.1001	Scope of subpart.
1006.1002	Contract clauses for letter contracts contemplating fixed-price definitive contracts.
1006.1003	Contract clauses for letter contracts contemplating CPFF definitive contracts.

SUBPART K—COST REIMBURSEMENT CONTRACTS

1006.1101	Scope of subpart.
1006.1102	Contract clauses.

SUBPART L—TUITION CONTRACTS

1006.1201	Scope of subpart.
1006.1202	Contract clauses.
1006.1203	Base residents.

SUBPART M—SPECIAL CLAUSES

1006.1301	Scope of subpart.
1006.1302	Furnishing of materials and supplies by the Government.
1006.1303	Guaranty.

Sec.	
1006.1304	Superseding specifications.
1006.1305	Delay in delivery of data.
1006.1306	First article approval.
1006.1307	Production sample tests.
1006.1308	First article inspection.
1006.1309	Progress payments (75 percent).
1006.1310	Progress payments (90 percent).
1006.1311	Spare parts provisioning.
1006.1312	Advance payments.
1006.1313	Employment of aliens.
1006.1314	Prior instruments superseded.
1006.1315	Ballment contemplated.
1006.1316	Special delivery provisions.
1006.1317	Facilities contemplated.
1006.1318	Transportation charges.
1006.1319	Flight risks.
1006.1320	Increase option.
1006.1321	Special overtime provisions.
1006.1322	Special inspection provisions.
1006.1323	Discount.
1006.1324	Construction guaranty.
1006.1325	Fixed overhead rates.
1006.1326	Redetermination of overhead rate.
1006.1327	Price escalation for standard steel items (1).
1006.1328	Price escalation for standard steel items (2).
1006.1329	Price escalation for standard steel items (3).
1006.1330	Price escalation for aluminum products.
1006.1331	Fixed-price guaranty.
1006.1332	Option to terminate fixed overhead rates.
1006.1333	Inspection specifications.
1006.1334	Ceiling prices.
1006.1335	Recovery of pension benefits to the Government.

SUBPART N—APPROVED CONTRACT FORMS (STANDARD, DEPARTMENT OF DEFENSE, AND AIR FORCE)

1006.1401	Scope of subpart.
1006.1402	Applicability.
1006.1403	Contract clauses.
1006.1404	Deviations.
1006.1405	Local reproduction.
1006.1406	Special purpose contract forms.
1006.1407	Supply of certain forms.
1006.1408	Supply Contract; Formal Advertising (Long Form); Standard Forms 26, 30, 31, and 32.
1006.1409	Supply Contract; Formal Advertising (Short Form); Standard Forms 33 and 32.
1006.1410	Supply Contract; Negotiated (Long Form); DD Form 351.
1006.1411	Order and Voucher for Purchase of Supplies or Services Other Than Personal; DA AGO Form 383.
1006.1412	Purchase Order; WD Form 18.
1006.1413	Delivery Order; DA AGO Form 383.
1006.1414	Contract for Purchase of Services Other Than Personal; AF Form 195.
1006.1415	Contract for Movement of Household Goods and Effects; DD Form 327.
1006.1416	Invitation for Bids (Construction Contract) WD Standard Procurement Form 116.
1006.1417	Bid (Construction Contract); WD Standard Procurement Form 117.
1006.1418	Request for Proposal and Contractor's Proposal (Short Form); WD Form 104.
1006.1419	Request for Proposal and Contractor's Proposal (Long Form) WD Forms 105, 105A, 105B, and 105C.
1006.1420	Contractor's Statement of Contingent or other Fees for Soliciting or Securing Contract; Standard Form 119.
1006.1421	Abstract of Bids (Short Form); WD Form 14.
1006.1422	Abstract of Bids (Long Form); WD Form 29.

Sec.	
1006.1423	Abstract of Bids (Long Form; Continuation Sheet); WD Form 29A.
1006.1424	Standard Forms of Bonds for Government Contracts.
1006.1425	Security Agreement; DD Form 441.

AUTHORITY: §§ 1006.1 to 1006.1425 issued under R. S. 161, sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 22, 171a. Interpret or apply 62 Stat. 21; 41 U. S. C. 151-161.

DERIVATION: Sec. VII AFM 70-6.

§ 1006.1 *Scope of part.* This part sets forth contract clauses required and authorized for use in the Air Force and the forms of contracts wherein such clauses are to be used. Except as otherwise specified in this part, such forms and clauses are authorized for use by any purchasing and contracting activity of the Air Force.

§ 1006.2 *Effect of Armed Services Procurement Regulation.* Since this part is published prior to completion of the Armed Services Procurement Regulation, instructions contained in this part may in some respects be contradicted by portions of Armed Services Procurement Regulation hereafter published. If such contradiction arises, the instructions contained in this part will be considered to be superseded to the extent of any inconsistency. All references in this part to Armed Services Procurement Regulation contract clauses will be understood to mean the designated Armed Services Procurement Regulation clauses as hereafter from time to time revised.

§ 1006.3 *Supplementary instructions.* Instructions not inconsistent with this part may be issued by the Commanding General, Air Materiel Command for application throughout the Air Force.

§ 1006.4 *Deviations.* Deviations from the requirements of the Armed Services Procurement Regulation will be made only with the approval of the Deputy Chief of Staff, Materiel, Headquarters United States Air Force. Deviations from these procedures, not involving Armed Services Procurement Regulation clauses, will be made only with the approval of the Commanding General, Air Materiel Command or his duly authorized representative. Requests for deviations will be in writing; will specify the section number of these procedures from which deviation is requested; and will set forth in detail the recommendations of the requesting agency and the reasons in support thereof. Requests will further indicate the effect of the deviation on the rights of the parties, and will clearly indicate the benefit inuring to the Government by reason of such deviation.

SUBPART A—FIXED-PRICE SUPPLY CONTRACTS

§ 1006.101 *Scope of subpart.* This subpart sets forth required and authorized clauses for use in fixed-price supply contracts, as defined in § 406.102 of this title, for definite and indefinite quantities.

§ 1006.102 *Contracts in excess of \$1,000—(a) Required clauses (§ 406.103 of this title)* All fixed-price supply contracts, for more than \$1,000 for defi-

nite quantities will consist of the following clauses in the following sequence:

- (1) Definitions as set forth in § 406.103-1 of this title.
- (2) Changes as set forth in § 406.103-2 of this title.
- (3) Extras as set forth in § 406.103-3 of this title.
- (4) Variation in quantity as set forth in § 406.103-4 of this title.
- (5) Inspection as set forth in § 406.103-5 of this title.
- (6) Responsibility for supplies as set forth in § 406.103-6 of this title.
- (7) Payments as set forth in § 406.103-7 of this title.
- (8) Assignment of claims as set forth in § 406.103-8 of this title.
- (9) Additional bond security as set forth in § 406.103-9 of this title.
- (10) Taxes as set forth in § 410.401 of this title. In addition thereto, the following may be added as a subparagraph in paragraph (a) thereof: "For the purposes of any additional procurement of supplies or work called for by any agreement supplemental hereto, the term 'contract date' shall be deemed to refer to the date of such supplemental agreement."
- (11) Default as set forth in § 406.103-11 of this title.
- (12) Disputes as set forth in § 406.103-12 of this title.
- (13) Notice and assistance as set forth in § 408.102 of this title.
- (14) Buy American Act as set forth in § 406.103-14 of this title.
- (15) Convict labor as set forth in § 411.203 of this title.
- (16) Eight-Hour Law as set forth in § 411.303 of this title.
- (17) Walsh-Healey Public Contracts Act as set forth in § 411.604 of this title. Where desired, the Armed Services Procurement Regulation clauses concerning Convict Labor, Eight-Hour Law and the Walsh-Healey Act may be joined in one contract, with appropriate language, indicating which clause is applicable.
- (18) Nondiscrimination in employment as set forth in § 411.303 of this title.
- (19) Officials not to benefit as set forth in § 406.103-19 of this title.
- (20) Covenant against contingent fees as set forth in § 406.103-20 of this title.
- (21) Termination for the convenience for the Government as set forth in § 407.701 of this title.
- (22) Ceiling prices as set forth in § 406.103-22 of this title.
- (b) *Clauses to be used where applicable.* The following additional clauses will be used in fixed-price supply contracts where required by Federal Statute, Executive Order, or Procurement Regulations, or where otherwise deemed appropriate:
 - (1) Subcontracts as set forth in § 406.104-14 of this title.
 - (2) Discount as set forth below:

Discount. In connection with discount offered, time will be computed from date of the delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at those points, or from date

correct invoice or voucher (properly certified by the Contractor) is received in the office specified by the Government if the latter date is later than the date of delivery.

- (3) Shipping requirements consisting of the following clauses:

Shipping requirements—(a) F. o. b. carrier's equipment. Whenever it is provided in this contract that articles, supplies, materials or other items called for under this contract shall be delivered to the Government f. o. b. Contractor's plant, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall, by the Contractor, be properly and adequately loaded in freight cars at a railroad siding at, or nearest to, Contractor's plant, and any shipment subject to less-than-carload freight rates shall, by the Contractor, be delivered into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected. All said shipments shall be made on Government bills of lading, but the Contractor shall make application therefor in the manner prescribed elsewhere herein. In inserting descriptions in Government bills of lading the Contractor will comply with the rules and provisions of the freight classification and tariffs of the carrier or carriers involved.

(b) *F. o. b. destination.* Whenever it is provided in this contract that products and materials or other items shall be delivered f. o. b. specified destinations, such products and materials or other items shall be shipped direct by the Contractor to the specified destinations, on commercial bills of lading, f. o. b. each destination, at the expense of the Contractor.

(c) *Shipping instructions.* If not otherwise provided herein, names of consignees of all products and materials or other items to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer at a later date.

(d) *Notice of Shipments as set forth in ASPR 7-105.4.*

- (4) Vendor's invoices as set forth below:

Vendor's invoices. Unless instructions with reference to the preparation and routing of vendor's invoices are included elsewhere in this contract, invoices or vendor's shipping documents used as invoices shall be forwarded by the Contractor to the USAF office having administrative responsibility for this contract, for recording and forwarding to the Accounting and Disbursing Officer (finance officer).

- (5) Government-furnished property as set forth in § 412.502 of this title. The following deviation from Armed Services Procurement Regulation has been approved:

Section 412.502 (f) (i) of this title, delete:

clause(s) _____ of
or in the clause or clauses of this contract
designated in the schedule.

NOTE: The clause set forth in § 1006.1302 is authorized for inclusion as an additional clause.

- (6) Reporting of royalties as set forth in § 408.103 of this title.

- (7) Reproduction rights as set forth below:

Reproduction rights. It is understood and agreed that the Contractor does not convey to the Government any reproduction rights in or to the supplies called for herein by virtue of the terms of this contract, except as may be herein otherwise provided.

- (8) Inspection and audit of books as set forth below:

Inspection and audit of books. (a) The Contractor agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

- (9) Employment of aliens as set forth in § 406.104-3 of this title.

To permit this clause to be embodied in the printed text, the following words may be inserted preceding the language of said clause: "If this contract calls for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories, "

- (10) Military security requirements as set forth in § 406.104-12 of this title.

- (11) Notice to Government of labor disputes as set forth in § 406.103-3 of this title.

- (12) Neutrality Act of 1939 as set forth in § 406.104-4 of this title.

- (13) Delivery as set forth below:

Delivery. (a) If any aircraft are required to be furnished to the Government under this contract, the following provisions of this paragraph shall be applicable to the delivery thereof. Unless otherwise provided in this clause or elsewhere in this contract, all said aircraft shall be delivered completely set up, serviced and ready for flight at the flying field where the same are to be finally inspected pursuant to the provisions of paragraph (f) of the clause hereof entitled "Additional Inspection Requirements." All fuel, oil and/or cooling fluid necessary for engine tests and/or flight tests required to be made under the provisions of AF Specification No. E-1800-E, shall be furnished and supplied at the expense of the Contractor. All fuel, oil and/or cooling fluid necessary for fly-away shall be furnished by the Contractor at its expense in an amount to be designated by the ferry pilot for each aircraft delivered. In the event it becomes necessary to ship any of the aircraft called for by rail or other carrier, same shall be packed as may be directed in writing by the Contracting Officer, such changes as may be necessary relating to packing and shipping to be made under the provisions of clause 2 hereof.

(b) If any spare parts or special hand tools and ground equipment are required to be furnished to the Government under this contract in accordance with the terms of any Appendix attached to or made a part of this contract, said spare parts and such special hand tools and ground equipment shall be delivered in accordance with the provisions of said Appendix.

(c) Except as otherwise provided in paragraph (b) of this clause or elsewhere herein, all the spare parts, if any, required to be furnished to the Government under this contract shall be delivered in accordance with the following schedule: The Contractor shall deliver in each month that quantity of each item of spare parts listed on the final spare parts exhibit, or on the respective final spare parts exhibits, to this contract which bears the same ratio to the total quantity of such item to be furnished as the number of articles to which such part related to be delivered in such month bears to the total number of such articles to be furnished. Where a fraction of a part, more than one-half ($\frac{1}{2}$), is involved in this arrangement, a complete part shall be delivered.

(d) Except as otherwise provided in the next two succeeding sentences of this paragraph (d), and except as to aircraft to be flown away, all the supplies required to be

furnished under this contract shall be delivered to the Government f.o.b. cars or carrier's equipment at the plant or plants (or the point or points nearest thereto that rail carrier service is available) at which such supplies are to be finally inspected as set forth in the schedule hereof and shall be packed in accordance with the requirements as set forth in the schedule. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped by air such supplies shall be delivered to the Government f.o.b. a flying field designated by the Contracting Officer for such purpose in the vicinity of the plant or plants at which such supplies are to be finally inspected. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped other than by rail or air, such supplies shall be delivered to the Government f.o.b. the plant or plants at which such supplies are to be finally inspected.

(e) For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be calculated as the date of final Government inspection ready for shipment to destination as certified to by the Government representative or, in the event of acceptance of the articles without inspection, pursuant to the provisions of clause 35 as the date of delivery to the carrier ready for shipment to destination.

(f) In the event shipments are to be made on Government bills of lading, the Contractor will make application/s therefor on AMC Form No. 63A addressed to the Officer in Charge, AMC Field Transportation Office, set forth elsewhere in this contract.

(14) Additional inspection requirements as set forth below—

Additional inspection requirements. (a) At the option of the Contracting Officer any of the supplies to be furnished hereunder may be accepted without Government inspection upon receipt of a certificate of the Contractor or attached to an invoice for said supplies reading substantially as follows:

I hereby certify that I did, on the ----- day of -----, 19 ----, ship via -----, in accordance with shipping instructions issued by the Contracting Officer, the supplies called for by Contract No. -----, that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications. This statement is furnished to support payment of the attached invoice.

(b) Notwithstanding any provisions of the certificate above referred to, the liability of the Contractor with respect to the supplies covered by this contract will, after inspection by the Government, or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud or such gross mistakes as amount to fraud.

(c) The provision of paragraph (c) of clause 5 reading as follows: "but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor" shall not be applicable to any supplies accepted without Government inspection pursuant to the foregoing provisions of this clause.

(d) The respective points for final inspection and acceptance by the Government of all the supplies (other than aircraft to be flown away, if any) to be furnished under this contract shall be, in addition to the

plant or plants of the Contractor specified in paragraph (b) of this clause, any other plant or plants of the Contractor or any plant or plants of a subcontractor or vendor of the Contractor hereunder, provided that such other plant or plants of the Contractor or such plant or plants of a subcontractor or vendor, shall have been approved for such purpose in writing by the Contracting Officer. It is expressly understood by the Contractor that request by it for the approval referred to in the preceding sentence must be made as soon as practicable to permit the Government to make necessary arrangements for inspection and acceptance, and that the Government is not obligated to make such final inspection and acceptance at any point so approved until a reasonable period after the date of such approval.

(e) Interchangeability. The Contractor shall, in the manufacture of the articles to be supplied under this contract, be required to use jigs, fixtures and/or other devices and appliances in all processes where such use is conducive to interchangeability and uniformity of the product, of such character as will reduce the necessity for selective assembly to the least practicable minimum, and whenever the inspector shall determine that any jig, fixture, device or other appliance is incorrect, worn, damaged, or defective to such an extent as to adversely affect basic interchangeability of the article manufactured, he shall so inform the Contractor in the same manner as applied to the rejection of defective material presented for acceptance by the Government representative, and the Contractor shall not thereafter use the said jig, fixture, or appliance, in its incorrect, worn, damaged, or defective form in the manufacture of articles intended for delivery under this contract. The Contractor shall inform the inspector when materials or parts are ready for inspection.

(f) Unless otherwise provided herein, if any aircraft are required to be furnished to the Government hereunder and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Government in the vicinity of the Contractor's plant or plants specified in paragraph (b) of this clause or in the vicinity of any other plant or plants of the Contractor approved for such purpose in writing by the Contracting Officer. Unless otherwise provided herein, such inspection and acceptance shall be accomplished in accordance with the provisions of AF Specification No. R-1800-E.

(15) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(16) Gratuities as set forth in § 406.104-16 of this title.

(17) Examination of records as set forth in § 406.104-15 of this title.

(18) Alterations as set forth in § 406.105-1 of this title. This alteration clause will be used in every contract, prepared on a printed form, in which additions, excisions, or changes have been made on the printed pages. This clause will be used only for the purpose of describing such additions, excisions, or changes, and will not be used to set forth additional clauses or variations of prescribed clauses.

(19) *Contractual contents.* Where deemed desirable, the following clause may be used:

Contractual contents. This contract consists of (insert enumeration of contract clauses and pages).

(20) *Approval.* The approval clause set forth in § 406.105-2 of this title will be used in all contracts which require manual approval of some individual other than the Contracting Officer, prior to becoming effective.

§ 1006.103 *Contracts with Canadian Commercial Corporation.* (a) Fixed price supply contracts placed with Canadian Commercial Corporation will consist of the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth in § 406.103-2 of this title.

(3) Extras as set forth in § 406.103-3 of this title.

(4) Variation in quantity as set forth in § 406.103-4 of this title.

(5) Inspection as set forth in § 406.103-5 of this title.

(6) Responsibility for supplies as set forth in § 406.103-6 of this title.

(7) Payments as set forth in § 406.103-7 of this title.

(8) Assignment of claims as set forth in § 406.103-8 of this title.

(9) Additional bond security as set forth in § 406.103-9 of this title.

(10) Default as set forth in § 406.103-11 of this title.

(11) Disputes as set forth in § 406.103-12 of this title.

(12) Notice and assistance as set forth in § 408.102 of this title.

(13) Officials not to benefit as set forth in § 406.103-19 of this title.

(14) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(15) Termination for the convenience of the Government as set forth in § 407.701 of this title.

(16) Notice of shipments as set forth in § 406.105-4 of this title.

(17) Patents as set forth below:

Patents. The Contractor shall hold and save the Government, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any invention, article, or appliance patented under the laws of Canada, manufactured or used in the performance of this contract, including their use by or for the Government.

The Government shall hold and save the Contractor, its representatives, agents, and subcontractors harmless from all liability under judgments by courts by competent jurisdiction, that may be obtained against the Contractor, its representatives, agents, and subcontractors, because of the use of any invention patented under the laws of the United States, specifically prescribed and authorized in writing by the Government as necessary for the performance of this contract, or the use of any invention patented under the laws of the United States which necessarily flows from the nature of the thing being produced or procured under this contract, but not otherwise: *Provided*, That such United States Letters Patent so used are now owned or controlled by the Canadian Government, the Contractor, its representatives, subcontractors, or persons in privity with the Contractor: *And provided further*, That immediate notice of any demand, liability, or legal proceedings arising from such use is given in writing by the Contractor to the Contracting Officer, and reserving to the Government the right to

intervene in any such demand or proceeding and in its discretion to defend same or make settlement thereof, and the Contractor shall furnish all information in its possession and all assistance of its employees, representatives, or agents requested by the Government.

(18) Patent licenses as set forth below

Patent licenses. The Contractor agrees to, and does hereby, in consideration of the terms and in consideration of payments to be made by the Government under this contract, grant unto the Government a non-exclusive, irrevocable, non-transferable, royalty-free license to make, have made, and use for governmental purposes throughout the world, and to sell or otherwise dispose of in accordance with law, machines, articles or compositions of matter, embodying any and all inventions conceived or first actually reduced to practice in the course of carrying out the work contemplated by this contract whether patented or unpatented, and to practice or cause to be practiced any methods or processes, whether patented or unpatented which are developed in carrying out the provisions of this contract; provided that nothing contained in this clause shall impose any obligation upon the Contractor to license or otherwise make available to the Government any invention, method or process, which is not owned or controlled by the Contractor or by the Canadian Government.

(19) Subcontractor substantially as set forth below

Subcontractor. It is understood and agreed that the supplies and materials to be furnished under this contract shall be manufactured and supplied by (hereinafter called the "subcontractor") at its factory located at _____

The performance of any of the work by any other subcontractor is prohibited, except with the specific approval of the Contracting Officer.

(20) Governing laws as set forth below

Governing laws. This contract will be construed according to the laws of the United States of America.

(21) Exemption from Buy American Act as set forth below

Exemption from Buy American Act. This contract has been exempted from the provision of the Buy American Act (41 USC 101a-d), pursuant to a determination made on _____ by _____

(22) Government-furnished property as set forth in § 412.502 of this title. Also see subparagraph (5) of § 1006.102 (b)

(23) Gratuities as set forth in § 406.104-16 of this title.

(24) Examination of records as set forth in § 406.104-15 of this title.

(25) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b)

(26) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b)

(27) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b)

§ 1006.104 Indefinite quantity contracts. (a) Indefinite quantity contracts may be either a "call-" or "open-" type. Procuring activities are reminded that while no major objections are interposed to the use of "call" contracts, as hereafter defined, the opportunity for post-

performance pricing under the "open" contract, as hereafter defined, militates against its widespread use. Accordingly, "open" contracts will be used only in accordance with instructions of the respective procuring activities and will be limited, generally, to emergency procurement purposes.

(b) A call contract is one in which there is a detailed description of the articles or services being purchased; the prices are set forth; there are no quantities or delivery schedule; funds need not be allotted to the contract, but funds are allotted to individual "calls"; and there need be no definite time limit within which calls may be made. Call contracts will be placed on a fixed-price basis.

(c) All call contracts will consist of the following clauses in the following sequence:

(1)—(34) Thirty-four clauses, consisting of clauses as set forth in subparagraphs (1) to (22) of § 1006.102 (a) and clauses as set forth in subparagraphs (1) to (12) of § 1006.102 (b)

(35) (i) Calls as set forth below

Calls. (a) Calls by the Government hereunder will be made by the Contracting Officer at Headquarters, Air Materiel Command, by written notification to the Contractor. Each such call shall set forth the particular articles and supplies to be furnished, the quantities thereof required, the date of delivery therefor, whether export or domestic packing is desired, and any special packing instructions. Immediately upon receipt of each such call, the Contractor, subject to the provisions of paragraphs (c) and (e) of this Clause shall proceed to manufacture or place orders to procure the articles and supplies so called for and shall deliver such articles and supplies in accordance with the delivery schedule specified in such call even though such schedule may provide for deliveries beyond the period provided in this contract for the making of calls under this paragraph (a).

(b) At such intervals as the Contractor may determine, which shall not in any case be more than thirty (30) days, the Contractor shall prepare and deliver to the Government a list of all articles and supplies and the quantities thereof furnished pursuant to calls made pursuant hereto, and which have not been set forth in any such list previously delivered to the Government. Such list shall be prepared as follows:

(1) Five (5) copies of each list shall be prepared on paper 8" x 10½" one (1) of such copies to be carbon-backed on vellum or other paper in form suitable for reproduction by blueprinting or other standard method.

(2) Each list shall be numbered in sequence according to the date of issuance thereof commencing with the number "1", and shall bear at the top of the first page and at the foot of each succeeding page such number and the number of the contract to which it pertains, for example, "Exhibit 1 to Contract No. AF33(600)-0000"

(3) Each list shall show as to each item listed thereon the item number, quantity called for, drawing or part number, nomenclature, unit price and total price, special packing charges, if any, aggregate price of all items listed, the date and origin and number of the call pursuant to which the articles and supplies were furnished, the dates of delivery, manner of shipment, destinations, and packing sheet number. Lists may also contain such information additional to the foregoing and not inconsistent therewith as may be appropriate.

(4) Three (3) copies of the list (one (1) copy of which shall be reproducible) shall

carry at the end thereof a certificate manually signed by an officer or other person authorized to bind the Contractor, with the corporate seal affixed, stating that the prices therein represent a firm quotation and that the articles listed thereon have been delivered to the Government. Provisions will also be made at the end of each such list for the written approval of the Contracting Officer, Headquarters, Air Materiel Command.

(5) The three (3) copies of the list, after signature by the Contractor as indicated above, together with two (2) unsigned copies thereof, shall be forwarded to the Contracting Officer, Headquarters, Air Materiel Command. Each such list shall be subject to the approval of the Contracting Officer, Headquarters, Air Materiel Command, and when so approved and with such changes therein as may be agreed upon by the Contractor and the Contracting Officer, the three (3) signed copies thereof will be signed by the Contracting Officer, the list will be published as a numbered exhibit to the contract, one (1) of the three (3) approved copies will be returned to the Contractor and the Contractor, upon submission of properly certified invoices accompanied by proper receiving reports, shall be entitled to be paid, in the manner set forth in this contract, even though such exhibit may not have become a part of this contract until after the close of the period during which calls may be made hereunder. Any dispute regarding any such list shall be determined in the manner provided in clause 12 hereof.

(c) If upon receipt of any call under paragraph (a) of this clause, the Contractor determines that it will be unable to meet the delivery schedule therein set forth, the Contractor (although it shall at all times be obligated to make every effort to meet such delivery schedule) shall immediately notify the Contracting Officer, Headquarters, Air Materiel Command, setting forth the best possible delivery schedule, and the parties will thereupon enter into negotiations to correct such situation by modification of the terms of such call. Likewise, if upon receipt of any call the Contractor determines that the funds provided by the contract will be exceeded by compliance with such call, Contractor shall immediately notify the Contracting Officer, Headquarters, Air Materiel Command, that no action will be taken upon such call until additional funds are made available.

(d) The Contractor shall, at the time of shipment or prior thereto, assign to each article or group of identical articles furnished hereunder, the item number which is subsequently to appear on the exhibit to this contract in respect to such article or group of articles, and shall place such item number together with the exhibit designation and the number of this contract (e. g. "Item No. 41 of Exhibit No. 6 to Contract No. AF33(600)-0000"), on the packing sheet covering shipment of such article or articles. In the event of direct shipment of such article or articles from the plant of the subcontractor or vendor, the Contractor shall be responsible for such item number and exhibit designation being placed upon the packing sheet by such subcontractor or vendor.

(ii) In the event that funds are allotted to the contract, the following paragraph will be included in the foregoing clause:

(e) As of the date of execution of this contract, there has been allotted for it the total sum set forth in the schedule. This sum may be increased from time to time by the Government solely in its discretion. Notwithstanding any other provision of this contract, the Contractor shall not furnish any articles or supplies pursuant hereto the aggregate price of which when added to the aggregate price of all articles and supplies

theretofore furnished pursuant hereto would exceed said sum. If at any time the Contractor considers it likely that, by reason of calls which have been made pursuant hereto, the aggregate amount set forth above may shortly be exceeded, the Contractor will so notify the Contracting Officer, Headquarters, Air Materiel Command, and the parties may thereupon enter into negotiations for such amendment to or modification of this contract and/or any call issued hereunder as may be appropriate. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor any amount in excess of the sum allotted for this contract.

(36) Delivery as set forth below

Delivery. (a) Except as otherwise provided in the next two succeeding sentences of this paragraph, and except as to aircraft to be flown away, all the supplies required to be furnished under this contract shall be delivered to the Government f. o. b. cars or carrier's equipment at the plant or plants (or the point or points nearest thereto that rail carrier service is available) at which such supplies are to be finally inspected as set forth in the Schedule and shall be packed in accordance with the requirements set forth in said Schedule. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped by air such supplies shall be delivered to the Government f. o. b. a flying field designated by the Contracting Officer for such purpose in the vicinity of the plant or plants at which such supplies are to be finally inspected. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped other than by rail or air, such supplies shall be delivered to the Government f. o. b. the plant or plants at which such supplies are to be finally inspected.

(b) For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be calculated as the date of final Government inspection ready for shipment to destination as certified to by the Government representative or, in the event of acceptance of the articles without inspection, pursuant to the provisions of clause 37, as the date of delivery to the carrier ready for shipment to destination.

(c) In the event shipments are to be made on Government bills of lading, the Contractor will make application/s therefor on AMC Form No. 63A addressed to the Officer in Charge, AMC Field Transportation Office set forth elsewhere in this contract.

(37) Additional inspection requirements as set forth in subparagraph (14) of § 1006.102 (b)

(38) Gratuities as set forth in § 406.104-16 of this title.

(39) Examination of records as set forth in § 406.104-15 of this title.

(40) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(41) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b)

(42) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(43) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b)

(d) An open contract is one in which there is no description other than a general classification of the articles or services being purchased; there are no prices (except contracts for the procurement of fuels and lubricants) there are no quantities or delivery schedule; funds are allotted to the contract; and calls must be placed prior to the end of the fiscal year in which the contract is executed. Open contracts may be placed on either a fixed-price or cost-plus-a-fixed-fee basis.

(e) All open contracts placed on a fixed-price basis will consist of the following clauses in the following sequence:

(1)-(34) Thirty-four clauses, consisting of clauses as set forth in subparagraphs (1) to (22) of § 1006.102 (a) and clauses as set forth in subparagraphs (1) to (12) of § 1006.102 (b)

(35) Calls as set forth below

Calls. (a) The Contractor shall furnish and deliver to the Government such articles and supplies, of the types hereinafter set forth, as the Government may call for hereunder during the period commencing on date of execution of this contract and end on the date set forth in the schedule hereto. Quantities of the articles and supplies to be furnished and the prices and charges therefor, which prices and charges shall be fair and equitable, shall be determined as hereinafter provided.

(b) The articles and supplies to be furnished hereunder shall consist of (here insert appropriate description).

(c) Calls by the Government hereunder will be made by the Contracting Officer at Headquarters, Air Materiel Command, by written notification to the Contractor. Each such call shall set forth the particular articles and supplies to be furnished, the quantities thereof required, the date of delivery therefor, whether export or domestic packing is desired, and any special packing instructions. Immediately upon receipt of each such call, the Contractor, subject to the provisions of paragraph (e) and (f) of this clause, shall proceed to manufacture or place orders to procure the articles and supplies in accordance with the delivery schedule specified in such call even though such schedule may provide for deliveries beyond the period provided in this contract for the making of calls under this paragraph (c).

(d) Within (insert appropriate number) days after the receipt of any call hereunder, or such earlier period as may be practicable, the Contractor shall prepare and deliver to the Government a firm quotation in response to such call; such quotation to be prepared as follows:

(1) Five (5) copies of each list shall be prepared on paper 8" x 10½" one (1) of such copies to be carbon-backed on vellum or other paper in form suitable for reproduction by blueprinting or other standard method

(2) Each list shall be numbered in sequence according to the date of issuance thereof commencing with the number "1" and shall bear at the top of the first page and at the foot of each succeeding page such number and the number of the contract to which it pertains, for example, "Exhibit 1 to Contract No. AF33(600)-0000"

(3) Each list shall contain a listing of the items on the call or calls covered thereby, showing item number, nomenclature, unit and total price, special packing charges, if any, delivery schedule, and any other information pertinent, but not inconsistent with the foregoing.

(4) Three (3) copies of the list (one (1) copy of which shall be reproducible) shall carry at the end thereof a certificate manually signed by an officer or other person authorized to bind the Contractor, with the corporate seal affixed, stating that the prices therein represent a firm quotation and that the prices listed thereon do not exceed applicable ceiling prices. Provisions will also be made at the end of each such list for the written approval of the Contracting Officer, Headquarters, Air Materiel Command.

(5) The three (3) copies of the list, after signature by the Contractor as indicated above, together with two (2) unsigned copies thereof, shall be forwarded to the Contracting Officer, Headquarters, Air Materiel Command. Each such list shall be subject to the approval of the Contracting Officer, Headquarters, Air Materiel Command, and when so approved and with such changes therein as may be agreed upon by the Contractor and the Contracting Officer, the three (3) signed copies thereof will be signed by the Contracting Officer, and the list will be published as a numbered exhibit to the contract, one (1) of the three (3) approved copies will be returned to the Contractor and the Contractor, upon submission of properly certified invoices accompanied by proper receiving reports, shall be entitled to be paid, in the manner set forth in this contract, even though such exhibit may not have become a part of this contract until after the close of the period during which calls may be made hereunder. Any dispute regarding any such list shall be determined in the manner provided in clause 12 hereof.

(e) If upon receipt of any call under paragraph (c) of this clause, the Contractor determines that it will be unable to meet the delivery schedule therein set forth, the Contractor (although it shall at all times be obligated to make every effort to meet such delivery schedule) shall immediately notify the Contracting Officer, Headquarters, Air Materiel Command, setting forth the best possible delivery schedule, and the parties will thereupon enter into negotiations to correct such situation by modification of the terms of such call. Likewise, if upon receipt of any call the Contractor determines that the funds provided by the contract will be exceeded by compliance with such call, Contractor shall immediately notify the Contracting Officer, Headquarters, Air Materiel Command that no action will be taken upon such call until additional funds are made available.

(f) As of the date of execution of this contract, there has been allotted for it the total sum set forth in the Schedule. This sum may be increased from time to time by the Government solely in its discretion. Notwithstanding any other provision of this contract, the Contractor shall not furnish any articles or supplies pursuant hereto the aggregate price of which when added to the aggregate price of all articles and supplies theretofore furnished pursuant hereto would exceed said sum. If at any time the Contractor considers it likely that, by reason of calls which have been made pursuant hereto, the aggregate amount set forth above may shortly be exceeded, the Contractor will so notify the Contracting Officer, Headquarters, Air Materiel Command, and the parties may thereupon enter into negotiations for such amendment to or modification of this contract and/or any call issued hereunder as may be appropriate. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor any amount in excess of the sum allotted for this contract.

(g) The Contractor shall, at the time of shipment or prior thereto, assign to each article or group of identical articles furnished hereunder, the item number which appears or is to appear on the exhibit to this contract in respect to such article or group

of articles, and shall place such item number together with the exhibit designation and the number of the contract (e. g. "Item No. 41 of Exhibit No. 6 to Contract No. AF33 (600)-0000"), on the packing sheet covering shipment of such article or articles. In the event of direct shipment of such article or articles from the plant of the subcontractor or vendor, the Contractor shall be responsible for such item number and exhibit designation being placed upon the packing sheet by such subcontractor or vendor.

(36) Delivery as set forth below:

Delivery. (a) Except as otherwise provided in the next two succeeding sentences of this paragraph, and except as to aircraft to be flown away, all the supplies required to be furnished under this contract shall be delivered to the Government f. o. b. cars or carrier's equipment at the plant or plants (or the point or points nearest thereto that rail carrier service is available) at which such supplies are to be finally inspected as set forth in the schedule and shall be packed in accordance with the requirements set forth in said Schedule. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped by air such supplies shall be delivered to the Government f. o. b. a flying field designated by the Contracting Officer for such purpose in the vicinity of the plant or plants at which such supplies are to be finally inspected. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped other than by rail or air, such supplies shall be delivered to the Government f. o. b. the plant or plants at which such supplies are to be finally inspected.

(b) For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be calculated as the date of final Government inspection ready for shipment to destination as certified to by the Government representative or, in the event of acceptance of the articles without inspection, pursuant to the provisions of clause 37, as the date of delivery to the carrier ready for shipment to destination.

(c) In the event shipments are to be made on Government bills of lading, the Contractor will make application/s therefor on AMC Form No. 63A addressed to the Officer in Charge, AMC Field Transportation Office, set forth elsewhere in this contract.

(37) Additional inspection requirements as set forth in subparagraph (14) of § 1006.102 (b)

(38) Gratuities as set forth in § 406.-104-16 of this title.

(39) Examination of records as set forth in § 406.104-15 of this title.

(40) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(41) Alterations as set forth in § 406.-105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(42) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b)

(43) Approval as set forth in § 406.-105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

§ 1006.105 *Contracts for \$1,000 or less.* Fixed-price supply contracts for \$1,000 or less for definite quantities may be prepared in accordance with the requirements of Air Force Regulation 70-15, or in accordance with the provisions of § 1006.102, except that the clauses set forth in subparagraphs (16) and (17) of § 1006.102 (b) will be deleted therefrom.

SUBPART B—COST-PLUS-A-FIXED-FEE CONTRACTS

§ 1006.201 *Scope of subpart.* This subpart sets forth the authorized clauses for inclusion in cost-plus-a-fixed-fee contracts.

§ 1006.202 *Cost-plus-a-fixed-fee supply contracts.* (a) All cost-plus-a-fixed-fee contracts for supplies shall contain the following clauses in the following sequence:

(1) Definitions as set forth in § 406.-103-1 of this title.

(2) Changes as set forth below:

Changes. The Contracting Officer may, at any time, by a written order make changes in or additions to the drawings and specifications, issue additional instructions, require additional work, within the general scope of the contract, or direct the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract, or in the time required for its performance, an equitable adjustment of the estimated cost and of the amount of the fixed fee to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(3) Inspection as set forth below:

Inspection. (a) All material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow at all times inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for this work. The Contractor shall inform the Inspector when materials or parts are ready for inspection. The Government representative shall have the right to require replacement of parts not in accordance with the approved drawings, or showing inferior workmanship or material, or which in his opinion are unsuited for the purpose intended or seriously overweight.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabrication methods, and finished parts. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(c) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be

discovered prior to final acceptance. Notwithstanding the provisions of the clause hereof entitled "Guaranty" final acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(d) At the option of the Contracting Officer any of said supplies may be accepted without Government inspection, and in such event the Contractor, promptly after each delivery without Government inspection, shall furnish to the Finance Officer designated to make payments under this contract, and to the Contracting Officer, a certificate reading substantially as follows:

I hereby certify that I did, on the _____ day of _____, 19____, ship via _____ in accordance with shipping instructions issued by the Contracting Officer, the supplies called for by _____ Contract No. _____, that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications.

(e) Notwithstanding the provisions of the clause hereof entitled "Guaranty" or any provisions of the certificate above referred to, the liability of the Contractor with respect to the supplies covered by this contract will, after inspection by the Government, or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud or such gross mistakes as amount to fraud.

(4) Reimbursement as set forth below:

Reimbursement. (a) The Contractor shall be paid as full compensation for the performance of this contract, the fixed fee specified in the Schedule and the allowable costs of performance of this contract. The estimated cost of performance is stated in the Schedule. Said estimated cost and the fixed fee are subject to increases or decreases as herein provided, but there shall be no adjustment in the amount of the fixed fee because of any errors or omissions in computing said estimated cost, or because the estimated cost varies from the actual cost.

(b) Allowable costs will be determined by the Contracting Officer in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation, it being understood that the premium portion of overtime wage payments shall be allowable hereunder only if and to the extent that the overtime work for which such payments are made has been expressly authorized by the Contracting Officer in writing. (Note: Special costs, if any, shall be as authorized by ASPR Section XV and shall be stated in the Schedule).

(c) The method of accounting used by the Contractor shall be subject to the approval of the Contracting Officer but no material change will be made in Contractor's method if it conforms to good accounting practice and if the costs are readily ascertainable therefrom. So far as practicable, the Contractor shall maintain a complete separate system of accounts for work under this contract. The Contractor shall procure materials and services in the manner most advantageous to the Government, price and other factors considered.

(d) The Government will currently reimburse the Contractor for such expenditures made in accordance with this contract as may be approved or ratified by the Contracting Officer and upon certification to and verification by him of the original signed payrolls for labor, the original paid invoices for material, or other original papers. In the event it is impracticable for the Contractor to furnish original signed payrolls for labor, original paid invoices for material or other original papers, Contractor shall furnish evi-

dence in a form acceptable to the Contracting Officer covering expenditures to be reimbursed hereunder. Reimbursement will normally be made weekly, but may be made at other intervals if conditions warrant.

(e) Ninety percent (90%) of the fixed fee set forth in the Schedule, as said fee may be increased or decreased from time to time, shall be paid as it accrues, in monthly installments based upon percentage of completion of the work as determined by the Contracting Officer. Upon completion of the work and its final acceptance any unpaid balance of the fee shall be paid to the Contractor.

(f) As of the date of this contract, there has been allotted for it the sum stated in the Schedule. This sum may be increased from time to time by the Government solely in its discretion. Upon the making of any such increase, the Contracting Officer shall notify the Contractor in writing of the amount thereof.

(g) Notwithstanding any other provisions of this contract the Contractor shall not be bound to take any action in connection with the performance of this contract that would cause the amount for which the Government will be obligated hereunder to exceed the sum allotted for this contract, and the obligation of the Contractor to proceed with the performance of this contract shall be limited accordingly. If at any time the Contractor has reason to believe that the amount to be expended by it in the next succeeding 30 days, when added to all previous expenditures and to the total amount of the Contractor's fixed fee, if any, will exceed 75 percent of the sum allotted for this contract, it shall notify the Contracting Officer to that effect, giving a new estimate of its total expenditures under this contract, so that an appropriate increase may be made in the sum allotted for this contract. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor either for reimbursement of expenditures or fixed fee or otherwise any amount in excess of the sum allotted for this contract; provided, however, that if the Contractor makes any expenditures for which funds are not allotted, the Contracting Officer may ratify such expenditures when funds are allotted.

(h) Any cost incurred by the Contractor under the terms of this contract which would constitute an allowable item of cost under the provisions of paragraph (b) of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents, incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

NOTE: Provisions of the reference "Part 2 of Section XV of the Armed Services Procurement Regulation" in a foregoing clause are contained in Subpart B, Part 414 of this title. Provisions of the reference "ASPR Section XV" in a foregoing clause are contained in Part 414 of this title.

(5) Assignment of claims as set forth in § 406.103-8 of this title.

(6) Delay in performance as set forth below.

Delay in performance. The Contractor shall not be liable for, nor shall performance of work under this contract be terminated for default by reason of, any delay in performance or of failure to perform, this contract, if such delay or failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics,

quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the Contracting Officer shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(7) Disputes as set forth in § 406.103-12 of this title.

(8) Notice and assistance as set forth in § 408.102 of this title.

(9) Buy American Act as set forth in § 406.103-14 of this title.

(10) Convict labor as set forth in § 411.203 of this title.

(11) Eight-Hour Law as set forth in § 411.303 of this title.

(12) Walsh-Healey Public Contracts Act as set forth in § 411.604 of this title.

NOTE: Where desired, the Armed Services Procurement Regulation clauses concerning Convict Labor, Eight-Hour Law, and the Walsh-Healey Act may be joined in one contract, with appropriate language, indicating which clause is applicable.

(13) Nondiscrimination in employment as set forth in § 411.803 of this title.

(14) Officials not to benefit as set forth in § 406.103-19 of this title.

(15) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(16) Termination as set forth in § 407.702 of this title.

(17) Ceiling prices as set forth in § 406.103-22 of this title.

(18) Notice to the Government of labor disputes as set forth in § 406.105-3 of this title.

(19) Notice of shipments as set forth in § 406.105-4 of this title.

(20) Government property as set forth in § 412.503 of this title. The following deviation from Armed Services Procurement Regulation has been approved. Delete the following phrases in § 412.503 (f) (i) of this title:

clause(s) _____ of
or of the clause or clauses designated in
the schedule.

(21) Additional provisions concerning Government property, as set forth below.

Additional provisions concerning Government property. (a) *Government's option.* The Contracting Officer may at his option from time to time furnish the Contractor with materials and/or supplies not readily available in the open market and which are required by the Contractor for the performance of this contract. In such event an equitable adjustment of the estimated cost and of the amount of the fixed fee to be paid to the Contractor shall be made as provided in the clause hereof entitled "Changes."

(b) *Delivery and disposition.* In the event materials, supplies, equipment or other property are furnished by the Government to the Contractor under this contract, except such materials and/or supplies furnished under the terms of paragraph (a) hereof, for installation in the products and materials or other items called for hereunder, or for use in connection with the performance of this contract, said Government property shall be delivered to the Contractor f. o. b. cars or carrier's equipment at the plant or plants of Contractor, or the point or points nearest thereto that rail carrier service is available, and any of such materials, supplies, equipment or other property not permanently installed in the products and materials or other

items called for hereunder, or properly expended by the Contractor in the performance of this contract, shall unless otherwise provided herein, be delivered by the Contractor to the Government f. o. b. cars or carrier's equipment at Contractor's plant or at the point or points nearest thereto at which the shipment can be delivered into carrier's possession, packed for domestic shipment. All said shipments shall be made on Government bills of lading, but the Contractor shall make application therefor on AMO Form No. 63A, which application shall be made in the manner prescribed in the Schedule. In inserting descriptions in Government bills of lading, the Contractor will comply with the rules and provisions of the freight classifications and tariffs of the carrier or carriers involved.

(22) Reporting of royalties as set forth in § 408.103 of this title.

(23) Subcontracts as set forth below.

Subcontracts. (a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order hereunder which is either (i) on a cost or cost-plus-a-fixed-fee basis, or (ii) on a fixed price basis exceeding in dollar amount either \$25,000 or five per centum of the total estimated cost of this contract.

(b) No contract shall be made by the Contractor with any other party for furnishing articles or services to be paid for on a time and material or labor-hour basis without the written approval of the Contracting Officer.

(c) No contract shall be made by the Contractor for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for without the written approval of the Contracting Officer. The Contracting Officer may approve the Contractor's purchasing system and from time to time rescind and reinstate such approval. While such approval is in effect, the requirement of approval of the contracts referred to in the first sentence of this paragraph (c) shall be considered waived, but such waiver shall not extend to nor dispense with the requirements for approval of the party with whom such contract is to be placed.

(d) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(e) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

(f) The cost-plus-a-percentage-of-cost system of contracting shall not be used by the Contractor.

(24) Reproduction rights as set forth in subparagraph (7) of § 1006.102 (b)

(25) Inspection and audit of books as set forth below.

Books and records. (a) The Contractor agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) Unless otherwise provided in this contract or by applicable statute, the Contractor shall, for a period of five years after final payment hereunder, preserve and make available its books, records, documents and other evidence bearing on its costs and expenses under this contract, including records, documents and other evidence in respect of any termination hereunder.

(c) The Contractor shall cause provisions similar to paragraphs (a) and (b) above, to be included in all subcontracts hereunder.

(d) All information obtained from the Contractor's records shall be treated as confidential.

(26) Employment of aliens as set forth in § 406.104-3 of this title.

To permit this clause to be embodied in the printed text, the following words may be inserted preceding the language of said clause: "If this contract calls for furnishing or constructing aircraft, aircraft parts or aeronautical accessories, * * *

(27) Shipping requirements as set forth below:

Shipping requirements—(a) F. o. b. cars or carrier's equipment. Whenever it is provided herein, the articles, supplies, materials or other items called for under this contract shall be delivered to the Government f. o. b. cars or carrier's equipment at the plant or plants of Contractor, or the point or points nearest thereto that rail carrier service is available, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall, by the Contractor, be properly and adequately loaded in freight cars at a railroad siding at, or nearest to, Contractor's plant, and any shipment subject to less-than-carload freight rates shall, by the Contractor, be delivered into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) *Shipping instructions.* If not otherwise provided herein, names of consignees of all products and materials or other items to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer at a later date.

(28) Military security requirements as set forth in § 406.104-12 of this title.

(29) Neutrality Act of 1939 as set forth in § 406.104-4 of this title.

(30) Guaranty as set forth below:

Guaranty. (a) The Contractor guarantees that all work called for herein shall meet and comply with the pertinent specifications, including performance of any and all articles called for under the terms hereof, that the work shall be executed in the best and most workmanlike manner, by qualified, careful and efficient workers, and that the materials shall be of the best quality of their respective kinds unless otherwise authorized by the Contracting Officer.

(b) If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted sample has been approved by the Contracting Officer.

(c) At the election of the Government, work called for hereunder which does not conform to the requirements of this contract may be accepted notwithstanding such failure to conform to this contract or to the specifications and guarantees, but in such event an appropriate reduction may be made in the fee. If any dispute shall arise concerning a proposed reduction in the fee the same shall be regarded as a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

NOTE: For preferred alternative Guaranty clause, see § 1006.1303.

(31) Insurance as set forth below:

Insurance. (a) Notwithstanding the provisions of Part 2 of Section XV of the Armed Services Procurement Regulations, the Government's obligation to reimburse the Contractor for the cost of bonds, insurance and any pension or retirement plan, incurred in connection with performance of the con-

tract, shall be limited to the cost of such bonds, insurance, pension or retirement plan as approved by the Contracting Officer. In addition to the allowance of such costs, the Contractor shall also be allowed costs and expenses incurred in the defense and/or discharge of such claims of others on account of death or bodily injury of persons or loss or destruction of or damage to property as may arise out of or in connection with the performance of the work under this contract; provided, that such reimbursement shall not include any amount for which the Contractor is indemnified or compensated by insurance or otherwise, or any amount for which it would have been so indemnified or compensated except for the failure of the Contractor to procure or maintain bonds or insurance in accordance with the requirement of the Contracting Officer. The foregoing shall not restrict the right of the Contractor to be reimbursed for the reasonable cost of necessary insurance covering the Contractor's property or property for which the Contractor is responsible to someone other than the Government and which is used or to be used in the performance of this contract.

(b) In addition to the Contractor's regular insurance program which may be approved pursuant to paragraph (a) hereof the Contractor agrees to procure and thereafter maintain such additional bonds, insurance, pension or retirement plans, in such forms and in such amounts and for such periods of time as the Contracting Officer may require in writing and the Contractor shall be reimbursed for the cost thereof.

(c) The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor, the cost and expense of which are reimbursable under the provisions of paragraph (a) hereof and the risk of which is the uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance and, upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government of all Contractor's rights and claims, except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(32) Additional provisions to be inserted in cost-plus-a-fixed-fee subcontracts, as set forth below:

Additional provisions to be inserted in cost-plus-a-fixed-fee subcontracts. (a) The Contractor will include in each cost-plus-a-fixed-fee subcontract made under this contract a provision as follows:

(1) The title to all work under this subcontract, completed or in the course of manufacture or assembly in the subcontractor's plant, shall be in the Government. Upon delivery thereof to the subcontractor at any point within the continental limits of the United States or any place approved by the Contractor, title to all purchased materials, parts, assemblies, subassemblies, tools, machinery, equipment and supplies, for which the subcontractor shall be entitled to be reimbursed hereunder, shall vest in the Government.

(2) The subcontractor shall not be reimbursed for the cost of any insurance on any property of the Government.

(3) As used herein the term "Government" shall be deemed to mean the United States of America.

(b) The Contractor will, if so requested by the Contracting Officer, include in any particular cost-plus-a-fixed-fee subcontract, a provision as follows:

The subcontractor shall procure and thereafter maintain the following insurance:

(here shall be inserted the types, amounts and limits of insurance, as specified in writing by the Contracting Officer). The cost of such insurance and losses or expenses (including settlements made with the written consent of the Contracting Officer who executed the principal contract or his duly authorized successor or representative) not compensated by insurance or otherwise and found and certified by the Contractor and said Contracting Officer or his duly authorized successor or representative to be just and reasonable, actually sustained by the subcontractor in the defense and/or discharge of such claims of others on account of death or bodily injury of persons or loss or destruction of or damage to property as may arise out of or in connection with the performance of the work under this subcontract shall be allowable items of cost hereunder; provided that such reimbursement shall not include any amount for which the subcontractor would have been indemnified or compensated except for the failure of the subcontractor to procure or maintain insurance in accordance with the requirements of this subcontract. The subcontractor shall give the Contractor immediate notice in writing of any suit or action filed against the subcontractor, arising out of the performance of this subcontract and of any claims against the subcontractor, the cost and expense of which is reimbursable under the provisions of this subcontract pertinent to allowable items of cost, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The subcontractor shall furnish immediately to the Contractor copies of all pertinent papers received by the subcontractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contractor, the subcontractor shall do any and all things to effect an assignment and subrogation in favor of the Contractor or its nominee of all subcontractor's rights and claims, except rights and claims of the subcontractor against the Contractor or such nominee, arising from or growing out of such asserted claim, and if required by the Contractor, shall authorize representatives of the Contractor or of its nominee to settle and/or defend any such claim and to represent the subcontractor in or take charge of any such litigation. Every policy for the insurance referred to in this paragraph shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the Contractor or the Government; provided, however, that the Contracting Officer, in writing, may approve such bonds or insurance policies without any such indorsement or other recital.

(c) Whenever a provision as set forth in paragraph (b) of this clause is inserted in any subcontract, then the Contractor will forthwith transmit to the Contracting Officer all notices and copies of papers received by it from the subcontractor, will make the Government its nominee for all assignments and subrogations received by it from the subcontractor thereunder and, if required by the Contracting Officer, will do everything in its power to have representatives of the Government authorized to settle and/or defend the claims therein referred to and to represent

the subcontractor in or to take charge of the litigation therein referred to.

(33) Release provisions, as set forth below:

Release provisions. (a) Prior to final payment and as a condition thereof, the Contractor shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (i) such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (ii) any claim based upon responsibility of the Contractor to third parties arising out of the performance of this contract not known to the Contractor at the time of furnishing the release.

(b) Even though the existence or amount thereof shall not be determined until after the furnishing of such release as is described next above, reimbursement to be made for payments made by the Contractor shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as hereinafter provided) to be due and payable for overtime compensation and allowances under local, State or Federal laws in connection with such wages and salaries.

(c) The Contractor shall promptly notify the Contracting Officer of any claims of the type described in paragraph (a) (ii) above, which are asserted subsequent to the execution of the release.

(d) In the event the Contracting Officer shall determine that the best interests of the Government required that the Contractor initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Contractor will proceed with such litigation in good faith and the costs and expenses of such litigation, including judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorneys' fees for private counsel, shall be reimbursable under this contract. The term "litigation" shall include suits at law or in equity and proceedings before any Governmental agency having jurisdiction over the claim.

(34) Gratuities as set forth in § 406.104-16 of this title.

(35) Examination of records as set forth in § 406.104-15 of this title.

(36) The Contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(37) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b)

(38) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b)

(39) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b)

§ 1006.203 *Cost-plus-a-fixed-fee service contracts.* (a) All cost-plus-a-fixed-fee contracts for services shall contain the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth in subparagraph (2) of § 1006.202 (a)

(3) Inspection as set forth below:

Inspection. All material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow at all times inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for this work.

(4) Reimbursement as set forth in subparagraph (4) of § 1006.202 (a)

(5) Assignment of claims as set forth in § 406.103-8 of this title.

(6) Delay in performance as set forth in subparagraph (6) of § 1006.202 (a)

(7) Disputes as set forth in § 406.103-12 of this title.

(8) Notice and assistance as set forth in § 408.102 of this title.

(9) Convict labor as set forth in § 411.203 of this title.

(10) Eight-hour law as set forth in § 411.303 of this title.

(11) Nondiscrimination in employment as set forth in § 411.803 of this title.

(12) Officials not to benefit as set forth in § 406.103-19 of this title.

(13) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(14) Termination as set forth in subparagraph (16) of § 1006.202 (a) except that paragraph (e) (1) (iv) (B) of § 407.702 of this title is deleted and the following substituted therefor:

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed fee payable shall be such proportionate part of the fee (or, if this contract calls for services and/or articles of different types, of such part of the fee as is reasonably allocable to the type of service and/or article under consideration) as the total number of services and/or articles delivered to and accepted by the Government bears to the total number of services and/or articles of a like kind called for by this contract.

If the amount determined under this subparagraph is less than the total payment of the fixed fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(15) Notice to the Government of labor disputes as set forth in § 406.105-3 of this title.

(16) Reporting of royalties as set forth in § 408.103 of this title.

(17) Subcontracts as set forth in subparagraph (23) of § 1006.202 (a)

(18) Reproduction rights as set forth in subparagraph (7) of § 1006.102 (b)

(19) Inspection and audit of books as set forth in subparagraph (25) of § 1006.202 (a)

(20) Employment of aliens as set forth in § 406.104-3 of this title and subparagraph (26) of § 1006.202 (a)

(21) Government property as set forth in § 412.503 of this title and subparagraph (20) of § 1006.202 (a).

(22) Additional provision concerning Government property as set forth in subparagraph (21) of § 1006.202 (a)

(23) Guaranty as set forth in subparagraph (30) of § 1006.202 (a) except that paragraph (b) of the guaranty as cited in this subparagraph will be deleted.

(24) Insurance as set forth in subparagraph (31) of § 1006.202 (a)

(25) Release provisions as set forth in subparagraph (33) of § 1006.202 (a)

(26) Gratuities as set forth in § 406.104-16 of this title.

(27) Examination of records as set forth in § 406.104-15 of this title.

(28) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7, and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(29) Ceiling prices as set forth in § 406.103-22 of this title.

(30) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(31) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(32) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b)

§ 1006.204 *Cost-plus-a-fixed-fee open contracts.* (a) All open contracts (see § 1006.104 (d)) placed on a cost-plus-a-fixed-fee basis will consist of the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth in subparagraph (2) of § 1006.202 (a)

(3) Inspection as set forth in clause 3, § 1006.202 (a)

(4) Reimbursement as set forth below:

Reimbursement. (a) The Contractor shall be paid as full compensation for the performance of any call under this contract, a fixed fee specified in the Schedule and the allowable costs of performance of any of such calls. The estimated cost of performance is set forth in each Exhibit approved attached to and made a part of this contract as provided in the clause hereof entitled "Calls" Said estimated costs and fixed fee are subject to increases or decreases as herein provided, but there shall be no adjustment in the amount of fixed fee because of any errors or omissions in computing said estimated cost, or because the estimated cost varies from the actual cost.

(b) Allowable costs will be determined by the Contracting Officer in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation, it being understood that the premium portion of overtime wage payments shall be allowable hereunder only if and to the extent that the overtime work for which such payments are made has been expressly authorized by the Contracting Officer in writing.

NOTE: Special costs, if any, will be as authorized by Part 414 of this title, and will be stated in the Schedule. Provisions of the reference "Part 2 of Section XV of the Armed Services Procurement Regulation" in the foregoing clause are contained in Part 414 of this title.

(c) The method of accounting used by the Contractor shall be subject to the approval of the Contracting Officer, but no material change will be made in Contractor's method if it conforms to good accounting practice and if the costs are readily ascertainable therefrom. So far as practicable, the Con-

tractor shall maintain a complete separate system of accounts for work under this contract. The Contractor shall procure materials and services in the manner most advantageous to the Government, price and other factors considered.

(d) The Government will currently reimburse the Contractor for such expenditures made in accordance with this contract as may be approved or ratified by the Contracting Officer and upon certification to and verification by him of the original signed payrolls for labor, the original paid invoices for material, or other original papers. In the event it is impracticable for the Contractor to furnish original signed payrolls for labor, original paid invoices for material or other original papers, Contractor shall furnish evidence in a form acceptable to the Contracting Officer covering expenditures to be reimbursed hereunder. Reimbursement will normally be made weekly, but may be made at other intervals if conditions so warrant.

(e) Ninety percent (90%) of the fixed fee set forth in the Schedule, as said fee may be increased or decreased from time to time, shall be paid as it accrues, in monthly installments based upon percentage of completion of the work on each call as determined by the Contracting Officer. Upon completion of the work on each call and its final acceptance any unpaid balance of the fee shall be paid to the Contractor.

(f) As of the date of this contract, there has been allotted for it the sum stated in the Schedule. This sum may be increased from time to time by the Government solely in its discretion. Upon the making of any such increase, the Contracting Officer shall notify the Contractor in writing of the amount thereof.

(g) Notwithstanding any other provision of this contract, the Contractor shall not be obligated to furnish any articles or supplies pursuant hereto the aggregate estimated cost and fixed fee of which, when added to the aggregate estimated cost and fixed fee of all articles and supplies theretofore furnished pursuant hereto, would exceed said sum. If at any time the Contractor considers it likely that, by reason of calls which have been made, of which it anticipates will be made pursuant hereto, the sum allotted may shortly be exceeded, the Contractor will so notify the Contracting Officer and the parties may thereupon enter into negotiations for such amendment to or modification of this contract and/or any call issued hereunder, as may be appropriate. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor any amount in excess of the sum allotted for this contract.

(h) Any cost incurred by the Contractor under the terms of this contract which would constitute an allowable item of cost under the provisions of paragraph (b) of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents, incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(5) Assignment of claims as set forth in § 406.103-8 of this title.

(6) Delay in performance as set forth in subparagraph (6) of § 1006.202 (a).

(7) Disputes as set forth in § 406.103-12 of this title.

(8) Notice and assistance as set forth in § 408.102 of this title.

(9) Buy American Act as set forth in § 406.103-14 of this title.

(10) Convict labor as set forth in § 411.203 of this title.

(11) Eight-Hour Law as set forth in § 411.303 of this title.

(12) Walsh-Healey Public Contracts Act as set forth in § 411.604 of this title.

(13) Nondiscrimination in employment as set forth in § 411.803 of this title.

(14) Officials not to benefit as set forth in § 406.103-19 of this title.

(15) Termination as set forth in subparagraph (16) of § 1006.202 (a).

(16) Calls as set forth below:

Calls. (a) The Contractor shall furnish and deliver to the Government such articles and supplies, of the types hereinafter set forth, as the Government may hereafter make calls for hereunder, during the period commencing on the date of execution hereof, and expiring on the date set forth in the Schedule. Quantities of the articles and supplies to be furnished hereunder and the estimated cost and fixed fee therefore, which estimated cost and fixed fee shall be fair and equitable, shall be determined as hereinafter provided.

(b) The articles and supplies to be furnished hereunder shall consist of (here insert appropriate description).

(c) Prior to requesting the Contractor to perform work hereunder, the Contracting Officer shall inform the Contractor in reasonable detail of the supplies required and shall request the Contractor to submit, for the approval of the Contracting Officer, a written "estimate" quoting an estimated unit cost, an estimated total cost and a fixed fee, not to exceed the percentage set forth in the Schedule, on each item, which estimate shall in any event be submitted prior to a call for the said supplies. Calls by the Government hereunder will be made by the Contracting Officer by notification to the Contractor, which notification may either be written, oral, telegraph, teletype or any other appropriate means of communication, but if not signed by the Contracting Officer shall be confirmed as soon as possible after the issuance thereof by written notice signed by the Contracting Officer. Each such call shall set forth the particular articles and supplies to be furnished, the quantities thereof required and the date of delivery required therefor. Immediately upon receipt of each such call, however received, the Contractor, subject to the provisions of paragraphs (d) of this clause and (g) of the clause hereof entitled "Reimbursement", shall proceed to manufacture or place orders for the procurement of the articles and supplies set forth therein and shall deliver such articles and supplies within the time specified even though such times of delivery may extend beyond the period provided in this contract for the making of calls under this paragraph.

(d) If, upon receipt of any call under paragraph (c) of this clause, the Contractor determines that it will be unable to meet the delivery schedule therein set forth, or that the meeting of such delivery schedule therein set forth, or that the meeting of such delivery schedule will necessitate the acquisition by the Contractor of additional facilities, or will result in interference with the contractor's production on its other orders and contracts with the Government, the Contractor (although it shall, at all times, be obligated to make every effort to meet such delivery schedule without interference with such other production) shall notify the contracting officer thereof as soon as possible after receipt of each such call. The parties will thereupon enter into negotiations to correct such situation either by modification of the terms of such call, or, if appropriate, by taking steps for the acquisition of such additional facilities as may be required, or otherwise may be agreed upon by them. If the reason assigned by the Contractor for the giving of any such notice shall be that additional facilities are required, or that interference with other orders and contracts with the Government will result, the contractor, pending a conclusion of such nego-

tiations satisfactory to both parties shall, nevertheless, be obligated to manufacture or place orders for the procurement of so much of the articles and supplies specified in such call as to which additional facilities are not required, or the furnishing of which will not interfere with the contractor's other orders and contracts with the Government, and to deliver the same within the time specified in such call.

(17) Notice to the Government of labor disputes as set forth in § 406.105-3 of this title.

(18) Notice of shipments as set forth in § 406.105-4 of this title.

(19) Government property as set forth in § 412.503 of this title and subparagraph (20) of § 1006.202 (a).

(20) Additional provisions concerning Government property as set forth in subparagraph (21) of § 1006.202 (a).

(21) Reporting of royalties as set forth in § 408.103 of this title.

(22) Subcontracts as set forth in subparagraph (23) of § 1006.202 (a).

(23) Reproduction rights as set forth in subparagraph (7) of § 1006.102 (b).

(24) Inspection and audit of books as set forth in subparagraph (25) of § 1006.202 (a).

(25) Employment of aliens as set forth in § 406.104-3 of this title and subparagraph (26) of § 1006.202 (a).

(26) Shipping requirements as set forth in subparagraph (27) of § 1006.202 (a).

(27) Military security requirements as set forth in § 406.104-12 of this title.

(28) Neutrality Act of 1939 as set forth in § 406.104-4 of this title.

(29) Guaranty as set forth in subparagraph (30) of § 1006.202 (a).

(30) Insurance as set forth in subparagraph (31) of § 1006.202 (a).

(31) Additional provisions to be inserted in cost-plus-a-fixed-fee subcontracts as set forth in subparagraph (32) of § 1006.202 (a).

(32) Release provisions as set forth in subparagraph (33) of § 1006.202 (a).

(33) Gratuities as set forth in § 406.104-16 of this title.

(34) Examination of records as set forth in § 406.104-15 of this title.

(35) Ceiling prices as set forth in § 406.103-22 of this title.

(36) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(37) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(38) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(39) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

SUBPART C—FIXED-PRICE CONTRACTS FOR RESEARCH AND DEVELOPMENT

§ 1006.301 *General.* Pending issuance of Subpart C of Part 406 of this

title (Armed Services Procurement Regulation) all fixed-price contracts for research and development will be in the form and contain the clauses set forth in § 1006.402.

SUBPART D—FIXED-PRICE SERVICE CONTRACTS

§ 1006.401 *Scope of subpart.* This subpart sets forth the required and authorized clauses for use in fixed-price contracts for services.

§ 1006.402 *Nonpersonal service contracts.* (a) All fixed-price contracts for nonpersonal services will consist of the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth below:

Changes. The Contracting Officer may, at any time, by a written order, issue additional instruction, require changed, modified or additional work and services or direct the omission of work and services covered by this contract. If such changes cause a material increase or decrease in the amount or character of the work to be performed under this contract, or in the time required for its performance, an equitable adjustment of the fixed price to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 90 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(3) Inspection as set forth in subparagraph (3) of § 1006.203 (a)

(4) Payments as set forth in § 406.103-7 of this title.

(5) Assignment of claims as set forth in § 406.103-8 of this title.

(6) Taxes as set forth in § 411.401 of this title. The additional subparagraph set forth in subparagraph (10) of § 1006.102 (a) may be included in said clause.

(7) Default as set forth in § 406.103-11 of this title.

(8) Disputes as set forth in § 406.103-12 of this title.

(9) Notice and assistance as set forth in § 408.102 of this title.

(10) Buy American Act as set forth in § 406.103-14 of this title.

(11) Convict labor as set forth in § 411.203 of this title.

(12) Eight-Hour Law as set forth in § 411.303 of this title.

(13) Nondiscrimination in employment as set forth in § 411.303 of this title.

(14) Officials not to benefit as set forth in § 406.103-19 of this title.

(15) Covenants against contingent fees as set forth in § 406.103-20 of this title.

(16) Termination for the convenience of the Government as set forth below:

Termination for the convenience of the Government. (a) The performance of work under this contract may be terminated by the Government in accordance with this

clause in whole, or from time to time in part whenever the Contracting Officer shall determine that such termination is the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of work under this contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under this contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by the Contracting Officer, deliver to the Government (1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, and (2) the completed or partially completed plans, drawings, information and other property which, if this contract had not been terminated, would be required to be furnished to the Government; (7) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph; provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may retain any such property at a price or prices approved by the Contracting Officer and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract, which is in possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same pro-

vided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(d) Subject to the provisions of paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done. The contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer, but without duplication of any amounts agreed upon in accordance with paragraph (d) above, shall determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(f) The Contractor shall have the right of appeal, under the clause entitled "Disputes", from any determination of the amount due to the Contractor made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit a claim within the time provided in paragraph (c) above, and has failed to request extension of such time, the Contractor shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraphs (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold pursuant to the provisions of this clause and

not otherwise recovered by or credited to the Government.

(h) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(i) The Government may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition.

(j) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

NOTE: Provisions of the reference "Section VIII, Armed Services Procurement Regulation" in a foregoing clause are contained in Part 407 of this title.

(17) Notice to Government of labor disputes as set forth in § 406.105-3 of this title.

(18) Employment of aliens as set forth in § 406.104-3 of this title, and in subparagraph (9) of § 1006.102 (b).

(19) Military security requirements as set forth in § 406.104-12 of this title.

(20) Government-furnished property as set forth in § 412.502 of this title and subparagraph (5) of § 1006.102 (b).

(21) Subcontracts as set forth below:

Subcontracts. No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer, but this provision shall not be taken as requiring the approval of contracts of employment between the Contractor and personnel assigned for service hereunder.

(22) Inspection and audit of books as set forth in subparagraph (8) of § 1006.102 (b).

(23) Gratuities as set forth in § 406.104-16 of this title.

(24) Examination of records as set forth in § 406.104-15 of this title.

(25) Ceiling prices as set forth in § 406.103-22 of this title.

(26) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(27) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(28) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(29) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

§ 1006.403 Personal service contracts.

(a) All fixed-price contracts for personal service will consist of the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Assignment of claims as set forth in § 406.103-8 of this title.

(3) Disputes as set forth in § 406.103-12 of this title.

(4) Officials not to benefit as set forth in § 406.103-19 of this title.

(5) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(6) Termination for the convenience of the Government as set forth below:

Termination for the convenience of the Government. (a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that any such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) Upon receipt of a Notice of Termination the Contractor shall, except as otherwise directed by the Contracting Officer, (1) discontinue all work to the extent and on the date specified in such notice and (2) transfer title and deliver to the Government, in the manner, to the extent and at the times directed by the Contracting Officer, the completed and partially completed work, material, drawings, data, information, reports and other property produced as a part of, or acquired in connection with the performance of, the work terminated in such notice.

(c) Upon termination of work as provided in this clause, the Contractor shall, in respect to the work terminated by the Notice of Termination, be paid that part of the fixed-price set forth in the clause of this contract entitled "Payment" which has accrued for services rendered hereunder up to the effective date of such notice and any other amounts properly owing to the Contractor under the aforesaid "Payments" clause which is theretofore unpaid. Settlement of the termination of the contract under the provisions of this paragraph (c) shall be evidenced by a Supplemental Agreement to the contract.

(d) Any dispute arising out of the termination of the contract under this clause shall be decided in accordance with the procedure prescribed in the "Disputes" clause hereof.

(7) Military security requirements as set forth in § 406.104-3 of this title.

(8) Subcontracts as set forth below:

Subcontracts. No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for.

(9) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7, and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(10) Examination of records as set forth in § 406.104-15 of this title.

(11) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(12) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(13) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

§ 1006.404 *Contracts with German and Austrian Nationals (Paperclip).* (a) All contracts for personal services with German and Austrian Nationals will consist of the following clauses in the following sequence:

(1) Scope of employment as set forth below:

Scope of employment. The Contractor, during the entire term of this contract, undertakes to prosecute and, to the best of his ability and skill, perform such scientific and technical tasks as may be assigned to him by the Contracting Officer, at such place or places as may be designated, and agrees, at all times, to do his utmost to enhance, develop and further the interests of the Government, in connection with the tasks assigned to him.

The nature of the personal services to be performed by the Contractor is as follows:

Technical Consultant Services

(2) Administration as set forth below:

Administration. The Contractor agrees that he shall be and remain under the supervision of such military or civilian personnel of the Government as the Government may designate.

(3) Security regulations as set forth below:

Security regulations. In view of the confidence and trust reposed in the Contractor under the special circumstances of this contract, and in view of the vital connection of the project contemplated hereunder to the defense, security, and welfare of the United States, and as a condition to formal admittance to this country, the Contractor agrees to observe such security measures as the President of the United States or the Secretary or the Contracting Officer may direct.

(4) Report of espionage as set forth below:

Report of espionage. The Contractor agrees that he will immediately report to the Contracting Officer whenever for any cause he has reason to believe that any active danger of espionage or sabotage exists in any place at which he is assigned, including complete information relating to the reasons which cause the Contractor to be apprehensive of such danger.

(5) Period of performance and compensation as set forth below:

Period of performance and compensation.

(a) The term of the contract and rate of compensation shall be as follows:

(1) Term: -----, 1951, to -----, 19--., inclusive.

(2) Rate: \$----- per -----

(b) The compensation herein provided shall not accrue:

(1) For time spent on emergency leave computed from the day of departure from place of employment to day of return to such place of employment unless accrued leave is authorized to be utilized.

(2) For absences from place of duty without authority.

(3) For agreed absences without compensation.

(c) In addition to the above salary provisions and in connection with travel directed by the Government, the Contractor shall be paid a per diem in lieu of subsistence at the rate and in the manner prescribed by law and regulations for civilian employees of the Government. It is specifically understood and agreed that per diem shall not accrue:

(1) After date of termination hereof as hereinafter provided.

(2) While in a travel status on emergency leave.

(3) When quarters and subsistence are furnished by the Government at no charge.

(d) The Contractor shall be entitled, in the same manner as full-time Civil Service employees, to (i) overtime compensation, (ii) holiday premium compensation, and (iii) compensation for holidays on which no work is performed.

(6) Hours of work as set forth below:

Hours of work. The hours of employment are based upon a five-day, forty-hour week which shall be standard for pay and leave purposes.

(7) Leave as set forth below:

Leave. The Contractor shall earn, accrue, accumulate, and be granted sick and annual leave in accordance with laws and regulations applicable to full-time permanent Civil Service employees of the United States Government in effect on the date of this contract.

(8) Patents and copyrights as set forth below:

Patents and copyrights. The Contractor, without further compensation, agrees:

(a) To disclose to the Contracting Officer all inventions conceived or first reduced to practice, or both conceived and reduced to practice by him during the term of this contract and for a period of six months after the termination thereof;

(b) To assign and transfer to the Government, as represented by the Secretary or his designees, the entire right, title, and interest in and to any and all inventions which Contractor conceives or first reduces to practice, or both conceives and reduces to practice, during the term of this contract or which are disclosed in an application for patent filed within six months thereafter, which inventions were made (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of Government employees on official duty, or (3) bear a direct relation to or are made in consequence of the official duties of the Contractor; and to sign and execute all papers necessary to the filing and prosecution of applications for patents on such inventions and for conveying to the Government title to such inventions and applications for patent thereon;

(c) To grant to the Government as represented by the Secretary, a non-exclusive,

royalty-free license in and to any and all inventions which Contractor conceives, or first reduces to practice, or both conceives and reduces to practice, during the term of this contract and for a period of six months thereafter and which Contractor is not required to assign to the Government of the United States in accordance with the provisions of subparagraph (b) above; and to sign and execute all papers necessary to convey to the Government the rights to which it is entitled in accordance with this provision;

(d) All applications for United States patents in which the Contractor is named as an inventor during the period beginning six months after the termination of this contract and continuing to 24 months next following the termination or expiration of this contract will be submitted to the Secretary, at the time of or prior to filing, together with a sworn statement as to the circumstances under which the invention was made, including dates of conception and reduction to practice. The Secretary will determine whether the said circumstances are so related to Contractor's employment under this contract that the Government is entitled to rights under such invention or inventions in accordance with subparagraphs (b) or (c) above, and upon a finding that the Government is so entitled to rights, the determination of the Secretary as to the nature and extent of such rights shall be final, and the Contractor agrees to execute all papers necessary to convey to the Government the rights to which it is entitled as determined by the Secretary; and

(e) For himself, his heirs and assigns, to assert no copyright at common law and to make no claim to copyright by statute in any material first produced by him in the performance of this contract.

(9) Transportation as set forth below:

Transportation. (a) The Government will provide for transportation of the Contractor:

(1) In furtherance of a permanent change of duty station relating to his employment under the terms of this contract, in accordance with Executive Order 9805, as heretofore or hereafter amended; and

(2) In furtherance of the contract, as determined by the Government in accordance with Standardized Government Travel Regulations, as heretofore or hereafter amended.

(b) In addition to the allowances provided for in subparagraph (a) (1) hereof, and at the expense of the Government, the Contractor will be authorized shipment of scientific books and equipment used in the performance of his work in connection with a permanent change of duty station.

(10) Housing as set forth below:

Housing. The Government will endeavor to assist the Contractor in procuring suitable housing at or near the place of employment. The cost of housing will be borne by the Contractor. Where public quarters are made available, the Contractor is authorized to use such facilities at the rate and on the basis prescribed for civilian employees of the Government. The Contractor agrees to pay all incidental expenses normally charged therefor, such as orderly fees.

(11) Subsistence as set forth below:

Subsistence. Where suitable messing facilities are operated by the Government at the place of employment, the Contractor may be authorized to use such facilities at the rate and on the basis prescribed for civilian employees of the Government.

(12) Medical services as set forth below:

Medical services. Medical Service will be provided by the Government to the Contractor on the same basis and at the same

cost as provided for civilian employees of the Government at the location of employment. Reasonable access to civilian medical care, will be permitted at the expense of the Contractor.

(13) Burial and effects as set forth below:

Burial and effects. During the term hereof, in event of the death of the Contractor, the Government will provide for local burial and return of the personal effects to dependents. If requested by dependents, and when time and conditions, as determined by the Government, permit, the body will be returned to his original place of residence at the expense of the Government. In the event that, after the death of the Contractor, the Contractor's dependents elect to return to his original place of residence, the Government, at its option, will provide for transportation of such dependents to his original place of residence, together with their personal and household effects not in excess of three thousand (3,000) pounds net weight.

(14) Injuries as set forth below:

Injuries. The Contractor is covered by the provisions of United States Employees' Compensation Act, as amended (5 U. S. C. 751 et seq.).

(15) Dependents as set forth below:

Dependents. The Government shall have the full right and privilege, after appropriate investigation, to determine which person or persons nominated by the Contractor as his dependents are to be considered for the purposes of this contract as the Contractor's dependents. (Normally a lawful wife, dependent parent, unmarried minor children, unmarried minor dependent step-children and unmarried minor dependent adopted children will be recognized by the Government as bona fide dependents provided each resides in Contractor's household.)

(16) Visas as set forth below:

Visa. Upon signature of this contract and provided the personal conduct and political background of the Contractor, as determined by the Government, merit such action, the Government will, upon request, favorably recommend the Contractor for an immigration visa. In the event of such recommendation, the Government, upon request, will also favorably recommend for an immigration visa such of Contractor's dependents whose personal conduct and political background, as determined by the Government, merit such action.

(17) Officials not to benefit as set forth in § 406.103-19 of this title.

(18) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(19) Disputes as set forth in § 406.103-12 of this title.

(20) Termination as set forth below:

Termination. This contract may be terminated by the Government at its option:

(a) When the Government administratively determines the Contractor to be unsatisfactory for the purposes of this contract or his conduct to be below required standards or when for any other reason it is determined that his services are no longer required.

(b) When and if the Contractor's visa, where issued, is revoked or invalidated or if the Contractor is denied entry into the United States.

(c) By mutual agreement.

(d) When the health of the Contractor, as determined by the Government, is such that he cannot properly perform his assigned duties.

(21) Definitions as set forth in § 406.103-1 of this title.

(22) Disclosure of information as set forth below:

Disclosure of information. The Contractor agrees that he will not disclose to any person not entitled to receive it any information relative to top secret, secret, confidential, or restricted matter as defined in current military regulations that may come to the knowledge of the Contractor.

(23) Certification as set forth below:

Certification. (a) Contractor certifies that, to the best of his knowledge and belief, his physical condition, character and qualifications are such as to permit him to fulfill this contract.

(b) Contractor certifies that he has read the within contract governing his employment as contemplated herein, and agrees that he will recognize its terms as the conditions under which employment is accepted and held.

(c) Contractor certifies and affirms that this contract contains all of the agreements, promises, understandings, and representations, verbal or otherwise, made on the part of the Government or any of its representatives, authorized or unauthorized.

(24) Examination of records as set forth in § 406.104-15 of this title.

(25) Approval of contract as set forth below:

Approval of contract. This contract shall be subject to the approval of the Secretary, or his duly authorized representative, and shall not be binding until so approved.

§ 1006.405 *Contracts for technical representative services.* (a) All fixed-price contracts for technical representative services will include the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title plus the following additional paragraphs:

(d) The term "technical representatives" as used herein includes technicians, field engineers, and specialists.

(e) The term "man month" as used herein shall be deemed to be the time devoted to the performance of services hereunder by one technical representative during a period of one calendar month.

(f) The term "continental limits of the United States" as used herein means any place within the territorial limits of the 48 States and the District of Columbia.

(g) The term "overseas" as used herein means any place outside the territorial limits of the 48 States and the District of Columbia.

(h) For the purpose of giving any of the directions to the Contractor contemplated by this clause, the term "Contracting Officer" includes the Commanding General, Air Materiel Command, and any duly authorized representative.

(2) Changes as set forth in subparagraph (2) of § 1006.402 (a)

(3) Assignment of claims as set forth in § 406.103-8 of this title.

(4) Default as set forth in § 406.103-11 of this title.

(5) Disputes as set forth in § 406.103-12 of this title.

(6) Notice and assistance as set forth in § 408.102 of this title.

(7) Convict labor as set forth in § 411.203 of this title.

(8) Eight-Hour Law as set forth in § 411.303 of this title.

(9) Nondiscrimination in employment as set forth in § 411.803 of this title.

(10) Officials not to benefit as set forth in § 406.103-19 of this title.

(11) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(12) Termination for convenience of the Government as set forth below:

Termination for convenience of the Government. (a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is for the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective. Upon receipt of a Notice of Termination and, except as otherwise directed by the Contracting Officer, the Contractor shall stop work under (1) the contract on the date and to the extent specified in the Notice of Termination, (2) proceed promptly with the return to its plant of such of its technical representatives as may be covered by said Notice of Termination, and (3) transfer title and deliver to the Government in the manner, and at the times and to the extent directed by the Contracting Officer, the plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government.

(b) Upon termination of work, as provided in paragraph (a) above, the Contractor shall, in respect to such technical representatives as may be covered by said Notice of Termination, be paid that part of the fixed price set forth in the provision entitled "Consideration and Payment" of the Schedule which was accrued for services rendered hereunder up to the effective date of such notice, and for time necessary for such technical representatives to return to the plant of the Contractor after the effective date of said notice and any amounts properly owing to it under said "Consideration and Payment" clause and theretofore unpaid. If, at the date of said notice, certain costs have actually been incurred by the Contractor in connection with the contract preliminary to the departure of the technical representatives covered by said Notice of Termination from the plant of the Contractor which are allocable to the entire period of performance contemplated hereunder, the Government will pay to the Contractor such sum as the Contracting Officer and the Contractor may agree is properly allocable to the terminated portion of the contract. Settlement under the provisions of this paragraph (b) shall be evidenced by a Supplemental Agreement to the contract.

(c) Any dispute arising out of the termination of the contract under this clause shall be decided in accordance with the procedure prescribed in the "Disputes" clause hereof.

(13) Notice to Government of labor disputes as set forth in § 406.105-3 of this title.

(14) Employment of aliens as set forth in § 406.104-3 of this title and in subparagraph (9) of § 1006.102 (b).

(15) Military security requirements as set forth in § 406.104-12 of this title.

(16) Government-furnished property as set forth in § 412.502 of this title and subparagraph (5) of § 1006.102 (b).

(17) Subcontracts as set forth in subparagraph (21) of § 1006.402 (a).

(18) Inspection and audit of books as set forth in subparagraph (8) of § 1006.102 (b).

(19) Capture and detention as set forth below authorized for overseas services:

Capture and detention. In the event any Contractor personnel assigned to duty under this contract is found to be missing from his place of employment, whether or not such personnel then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence was due to the action of a hostile force or the force of any power not allied with the United States in a common military effort, or is known to have been taken prisoner, hostage, or otherwise detained by a hostile force or the force of any power not allied with the United States in a common military effort, the time spent by such personnel during such detention (which shall be construed to include the period until such personnel is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or death in fact is established by a finding by the Federal Security Administrator or other Federal body having jurisdiction or by other evidence satisfactory to the contracting officer, or death can legally be presumed to have occurred) shall not be considered as time spent in the performance of services hereunder and the Government shall not be obligated to make any payment on account of such personnel except as provided in this paragraph. The Contractor is authorized to and shall enter into agreements with personnel hereunder to pay benefits to the extent not otherwise paid to such personnel in the event of, and during the time spent by such personnel during such detention, as construed above, which will equal the total wage due for such period of detention, as construed above, computed on the basis of wage rate being paid such personnel at the time of such detention. Claims for benefits shall be made under applicable law with the Administrator. In the event that the Contractor is obligated by agreements, authorized above, to pay and shall have paid benefits in an amount not paid or payable by the Administrator on account of such detention of such personnel, the Government shall pay to the Contractor, in respect of such personnel during the period of such detention, as construed above, such amount which when added to the amount paid or to be paid in respect of such personnel by the Administrator, whether to the Contractor or otherwise, will equal the total wage due for such period of detention, as construed above, computed on the basis of wage rate being paid such personnel at the time of such detention. Subject to the availability of funds therefor, the obligation of the Government to make payments provided for by this paragraph shall continue in effect during the period of such detention, as construed above, and shall survive the earlier expiration or termination of this contract.

(20) Gratuities as set forth in § 406.-104-16 of this title.

(21) Examination of records as set forth in § 406.104-15 of this title.

(22) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 403 of this title will be used in accordance with instructions contained in said section and part. The clauses as set forth in §§ 406.105-5, 406.105-7 and 403.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(23) Alterations as set forth in § 406.-105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(24) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(25) Approval as set forth in § 406.-105-2 of this title will be used in accord-

ance with instructions contained in subparagraph (20) of § 1006.102 (b)

SUBPART E—TIME AND MATERIALS CONTRACTS

§ 1006.501 *Scope of subpart.* This subpart sets forth authorized clauses for use in time and materials contracts. The use of this form of contract should be limited to those situations and governed by the conditions set forth in § 402.407 of this title and § 1003.403 (a)

§ 1006.502 *Contract clauses.* (a) All time and materials contracts will include the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth below

Changes. The Contracting Officer may, at any time, by a written order, issue additional instructions, require changed, modified or additional work and services or direct the omission of work and services covered by this contract. If such changes require a change in the time of performance of the work called for hereunder, the contract shall be modified in writing accordingly. The hourly rate set forth in the Schedule shall not be adjusted by reason of any order issued under this clause.

(3) Inspection as set forth below

Inspection. (a) All material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow, at all times, inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for the work. The Contractor shall inform the inspector when services and supplies are ready for inspection. The Government representative shall have the right to (1) require the replacement of parts which are not in accordance with applicable specifications, and (2) require the correction of defects; any of such replacement or correction which is required by virtue of the Contractor's inferior workmanship or unsatisfactory inspection system, shall be accomplished at the sole cost and expense of the Contractor.

(b) The Contractor shall provide and maintain a complete inspection system acceptable to the Government covering the inspection of the services and supplies furnished under this contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract.

(c) The inspection and test by the Government of any particular item of work does not relieve the Contractor from any responsibility regarding any failures to meet contract requirements which may be subsequently discovered prior to final acceptance.

(d) The Contractor covenants and agrees to employ only qualified and competent employees in the performance of this contract, and that employees used will, on the average, be as efficient as the average for the departments of its plant concerned with performance of this contract.

(4) Payments as set forth below:

Payments—(a) Time rate. (1) Upon certification to and approval by the Contracting Officer of properly substantiated vouchers indicating the number of direct labor hours performed, the Government will pay the Contractor amounts computed by applying the appropriate Time Rate set forth in the Schedule to such hours, which rates shall include wages, overhead, general and administrative expense (except as otherwise provided), and profit. Fractional parts of an

hour shall be payable on a pro rata basis. The Contractor will substantiate vouchers by individual daily job time cards, preferably signed by the workers performing the services, and in all cases by evidence of actual payment. Payments will normally be made at Contractor's payroll intervals, but may be varied if conditions so warrant.

(2) Notwithstanding the provisions of subparagraph (1) hereof, the Contracting Officer shall withhold payment of amounts due under this paragraph (a) equivalent to any average payment hereunder, at such time as may be deemed appropriate by the Contracting Officer. Such amount shall become payable upon completion of performance of this contract, which shall be upon delivery of all work called for hereunder and submission of a written statement by the Contractor releasing the Government from any further claims whatsoever (except such final payment).

(3) As used in this paragraph (a), direct labor shall be as defined in the Schedule.

(b) *Materials (including subcontracts).*

(1) The Contractor shall be paid upon submission of properly certified allowable costs of direct materials utilized in performance of this contract, subject to the limitation of funds allotted.

(2) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Part 2, Section XV of the Armed Services Procurement Regulation, it being understood however that:

A. For purposes of payment, the cost of subcontracts which are authorized pursuant to clause 22 hereof, shall be reimbursable costs hereunder.

B. The cost-plus-a-percentage-of-cost system of contracting shall not be used by the contractor in procuring articles, materials, supplies, or services required for the performance of this contract.

C. The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications, and when unable to take advantage of such benefits it shall promptly notify the Contracting Officer to that effect and the reason therefor. Credit shall be given to the Government, in accordance with Contractor's standard accounting policy for all cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap, where the amount of such scrap is appreciable, commissions and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor or lost through fault of the Government, shall not be deducted from gross costs.

D. The Contractor shall support all material charges by paid invoices or store room requisitions.

E. Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. Whenever practicable, the Contractor shall inform the Contracting Officer in advance of proposed overtime work.

(c) *Records and certifications.* The Contractor will maintain detailed, complete and accurate accounting records on a job-order basis, which records will be preserved for a period of at least six (6) years after completion of this contract. The Contractor shall support all vouchers with a certificate that the amount billed is correct and just.

(d) *Funds allotted.* As of the date of execution of this contract, there has been allotted for it the total sum set forth in the Schedule. This sum may be increased from time to time by the Government solely at its

discretion. Notwithstanding any other provisions of this contract, the Contractor shall not be obligated to perform any services, pursuant hereto, the aggregate price of which when added to the aggregate price of all services theretofore furnished pursuant hereto, would exceed said sum. If, at any time, the Contractor considers it likely that the aggregate amount, set forth in the Schedule, may shortly be exceeded, the Contractor will so notify the Contracting Officer and the parties may thereupon enter into negotiations for such amendment to or modification of this contract as may be appropriate. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor any amount in excess of the sum allotted for this contract.

NOTE: Provisions of the reference "Part 2, Section XV of the Armed Services Procurement Regulation" in a foregoing clause are contained in Subpart B, Part 414 of this title.

(5) Assignment of claims as set forth in § 406.103-8 of this title.

(6) Excusable delays as set forth below

Excusable delays. The Contractor shall not be liable for any delay in the performance of this contract which results without fault or negligence on the part of the Contractor and which is due to causes beyond its control including, without being limited to, acts of God or of the public enemy, any preference, priority or allocation order issued by the Government or any other act of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; and, unless the Contracting Officer shall determine that the materials or supplies to be furnished under a subcontract are procurable in the open market, any delay of a subcontractor which results without fault or negligence on the part of the Contractor, and which is due to causes beyond the control of the Contractor, including without being limited to the types or causes above enumerated; provided, that the Contractor shall notify the Contracting Officer in writing of such delay and the cause thereof, within ten days from the beginning thereof or within such further period as the Contracting Officer shall, prior to the date of final settlement of this contract, grant for the giving of such notice. The Contracting Officer shall then ascertain the facts and the extent of the delay and shall make an equitable adjustment in the prescribed time of performance when in his opinion the facts justify such action. If the Contractor objects to any adjustment made by the Contracting Officer under this clause, the dispute shall be determined as provided in clause 7 hereof.

(7) Disputes as set forth in § 406.103-11 of this title.

(8) Notice and assistance as set forth in § 408.102 of this title.

(9) Buy American Act as set forth in § 406.103-14 of this title.

(10) Convict labor as set forth in § 411.203 of this title.

(11) Eight-Hour Law as set forth in § 411.303 of this title.

(12) Walsh-Healey Public Contracts Act as set forth in § 411.604 of this title.

(13) Nondiscrimination in employment as set forth in § 411.803 of this title.

(14) Officials not to benefit as set forth in § 406.103-19 of this title.

(15) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(16) Termination as set forth below

Termination. (a) The performance of work under the contract may be terminated by the Government in accordance with this

clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such long period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after the Notice of Termination of the contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract entitled "Excusable Delays" the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated; (5) with the approval or ratification of the Contracting Officer, which approval or ratification shall be final and conclusive for all the purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph; provided, however, that the Contractor (i) shall not be required to extend credit to any purchases, and (ii) may acquire any such property

under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations, notwithstanding any delay in determining or adjusting any amount reimbursable under the provisions of this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit, on work done. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine on the basis of information

available to him the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the termination of the contract is for the convenience of the Government:

(i) There shall be included for direct labor hours (as defined in the Schedule of the contract) expended prior and up to the effective date of the termination, an amount computed by applying the hourly rate or rates set forth in the Schedule, less any hourly rate payments theretofore made to the Contractor.

(ii) There shall be included therein all costs of material reimbursable in accordance with the contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of termination inventory; *Provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.*

(2) If the termination of the contract is for the default of the Contractor:

(i) There shall be included for all direct labor hours (as defined in the Schedule of the contract) expended prior and up to the effective date of termination, an amount computed by applying the hourly rate or rates set forth in the Schedule less the profit factor contained therein as indicated in the Schedule and less any hourly rate payments theretofore made.

(ii) There shall be included therein such costs as are set forth in subparagraphs (i), (ii), and (iii) of this paragraph (e) and not prohibited by the provisions thereof.

(3) If the amount determined under subparagraphs (1) and (2) above is less than the total payments theretofore made to the Contractor, the Contractor shall repay the excess amount to the Government.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes" from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered or credited to the Government.

(h) In the event of a partial termination, the portion of the contract relating to hourly rates which are payable with respect to the

work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Government, and such adjustment shall be evidenced by an amendment to the contract.

(1) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, No interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of six years after final settlement under this contract shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

NOTE: Provisions of the reference "Section VIII, Armed Services Procurement Regulation" in a foregoing clause are contained in Part 407 of this title.

(17) Notice to Government of labor disputes as set forth in § 406.105-3 of this title.

(18) Notice of shipments as set forth in § 406.105-4 of this title.

(19) Employment of aliens as set forth in § 406.104-3 of this title.

(20) Government property as set forth below.

Government property. (a) The Government shall deliver to the Contractor the property described in the Schedule or the specifications at the times stated therein, or if not so stated, in sufficient time to enable the Contractor to perform this contract. If any of such property is not delivered to the Contractor by such time or times, the Contracting Officer, upon written request of the Contractor, shall equitably adjust the time of performance of this contract. In no event shall the Government be liable to the Contractor for damages or loss of profit by reason of any delay in or failure to deliver any or all of the items set forth in the Schedule or specifications. By notice in writing the Contracting Officer may increase or decrease the amount of Government Property to be so furnished, in which event, upon the request of either of the parties hereto, an equitable adjustment may be made in contract terms. Except as otherwise may be specified in the Schedule, all property listed to be Government-furnished shall be delivered to the Contractor f. o. b. car's or car's equipment at the plant or plants of the Contractor, or the point or points nearest thereto that rail carrier service is available.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All the items to be furnished by the Government, as set forth in the Schedule or specifications, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personally by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" dated March 1951, which is incorporated herein by reference.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (1) The Contractor shall not be liable for any loss of or damage to Government Property, except that the Contractor shall be responsible for any such loss or damage (A) which results from any willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor; due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representative mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or which results from a failure on the part of the Contractor, to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of other clauses of this con-

tract, or of the clause or clauses designated in the Schedule; provided, that, if more than one of the above exceptions apply, the Contractor's liability shall not be limited by any other exception.

(1) The Contractor represents that it is not including in the rate or rates hereunder, and agrees that it will not hereafter include rate to the Government, any charge or reserve for insurance (including self-insurance, funds or reserves) covering loss or destruction of or damage to the Government Property.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this

contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of the Government Property as may be directed by the Contracting Officer. Recoverable scrap shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal approved by the Contracting Officer shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

(21) Inspection and audit of books as set forth below

Inspection and audit of books. (a) The Contractor agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

(22) Subcontracts as set forth below

Subcontracts. No contract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the written approval of the Contracting Officer.

(23) Shipping requirements as set forth below

Shipping requirements—(a) F. o. b. carrier's equipment. Whenever it is provided in this contract that articles, supplies, materials, or other items called for under this contract shall be delivered to the Government f. o. b. Contractor's plant, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall, by the Contractor, be properly and adequately loaded in freight cars at a railroad siding at, or nearest to, the Contractor's plant, and any shipment subject to less-than-carload freight rates shall, by the Contractor, be delivered into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto that delivery can be effected. All said shipments shall be made on Government bills of lading, but the Contractor shall make application therefor on AMC Form No. 63A, which application shall be made in the manner prescribed elsewhere herein. In inserting descriptions in Government bills of lading the Contractor will comply with the rules and provisions of the freight classifications and tariffs of the carrier or carriers involved.

(b) *F. o. b. destination.* Whenever it is provided in this contract that products and materials or other items shall be delivered f. o. b. specified destinations, such products and materials, or other items shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading f. o. b. each destination, at the expense of the Contractor.

(c) *Shipping instructions.* If not otherwise provided herein, names of consignees of all products and materials or other items to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer.

(24) Additional provisions relating to delivery as set forth below

Additional provisions relating to delivery. (a) If any aircraft are required to be delivered to the Government hereunder the following provisions will be applicable:

(1) Except as otherwise provided elsewhere in this contract, all aircraft shall be delivered completely set up, serviced and ready for flight at the flying field where the same are to be finally inspected.

(2) All fuel, oil and/or cooling fluid necessary for engine tests and/or flight tests required to be made hereunder shall be furnished by the Contractor.

(3) All fuel, oil and/or cooling fluid necessary for flyaway shall be furnished by the Contractor in an amount to be designated by the ferry pilot for each aircraft delivered.

(4) In the event it becomes necessary to ship any aircraft called for by rail or other carrier, same shall be packed as may be directed in writing by the Contracting Officer, such changes as may be necessary relating to packing and shipping to be made under the provisions of the clause hereof entitled "Changes."

(b) Except as otherwise provided in the next two succeeding sentences of this paragraph, and except as to aircraft to be flown away, all the supplies to be delivered under this contract shall be delivered to the Government f. o. b. cars or carrier's equipment at the plant or plants (or point or points nearest thereto that rail carrier service is available) at which such supplies are to be finally inspected hereunder and shall be packed in accordance with the requirements hereof. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped by air, such supplies shall be delivered to the Government f. o. b. a flying field designated by the Contracting Officer in the vicinity of the plant or plants at which said supplies are to be finally inspected. If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be shipped by other than rail or air, such supplies shall be delivered to the Government f. o. b. the plant or plants at which such supplies are to be finally inspected.

(c) For purposes of determining the fulfillment of this contract as far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be calculated as the date of final Government inspection, ready for shipment to destination as certified to by the Government representative.

(d) In the event that shipments are to be made on Government bills of lading, the Contractor will make application's therefor on AMC Form No. 63A addressed to the office designated in the Schedule.

(25) Additional inspection requirements as set forth below

Additional inspection requirements. (a) Unless otherwise provided herein, if any aircraft are required to be furnished the Government hereunder, and the same are to be flown away, such aircraft shall be finally inspected and accepted by the Government at a flying field or fields to be approved by the Government in the vicinity of the Contractor's plant or plants specified in the Schedule, or in the vicinity of any other plant or plants of the Contractor approved for such purpose in writing by the Contracting Officer.

(b) The plant or plants of the Contractor designated in the Schedule are designated as the point or respective points for final inspection and acceptance by the Government of items (other than aircraft to be flown away) to be furnished under this contract.

(c) The respective points for final inspection and acceptance by the Government of all the supplies (other than aircraft to be flown away) to be furnished under this con-

tract shall be, in addition to the plant or plants of the Contractor specified, any other plant or plants of the Contractor, or any plant or plants of a subcontractor or vendor of the Contractor hereunder; provided, that such other points shall have been approved for such purpose in writing by the Contracting Officer. It is expressly understood by the Contractor that request by it for the approval referred to in the preceding sentence must be made as soon as practicable to permit the Government to make necessary arrangements for inspection and acceptance, and that the Government is not obligated to make such final inspection and acceptance at any point so approved until a reasonable period after the date of such approval.

(26) Guaranty as set forth below

Guaranty. (a) The Contractor guarantees that the services hereunder will conform to the highest professional standards in the field, and that at the time of delivery thereof to the Government the articles provided for in this contract will conform to the requirements of this contract, and will be free from any defects in material and workmanship; subject, however, to the following paragraph (b).

(b) The final acceptance of the supplies or work by the Government shall be conclusive except as regards (A) fraud or such gross mistakes as amount to fraud, or (B) any defects or failure to conform to contract requirements (whether latent or patent) as to which the Government has notified the Contractor within six (6) months after the date of said acceptance.

(c) The Contractor shall, whenever discovered by the Government and requested, remedy defects or failures to conform to contract requirements by correction or replacement, at no cost whatever to the Government, when said defects or failures are determined to have been occasioned by the reasons set forth in (A) of paragraph (b) preceding.

(d) Subject to the time limitation set forth in paragraph (b) hereof, the Contractor shall remedy defects or failures to conform to contract requirements by correction or replacement, when due to causes other than those enumerated in (A) of paragraph (b) hereof, and for performance of such work the Contractor shall be entitled to payment in accordance with the terms of this Contract, except that the profit portion of the hourly rate or rates, as set forth in the Schedule, shall not be payable in connection with any such work.

(e) The foregoing provisions shall be equally applicable to any work performed hereunder.

(27) Gratuities as set forth in § 406.104-16 of this title.

(28) Examination of records clause as set forth in § 406.104-15, of this title.

(29) Ceiling prices as set forth in § 406.103-22 of this title.

(30) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 403 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 406.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(31) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(32) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(33) Approval as set forth in § 406.105-2 of this title will be used in

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accordance with instructions contained in subparagraph (20) of § 1006.102.(b)

SUBPART F—CONSTRUCTION CONTRACTS

§ 1006.601 *Scope of subpart.* This subpart sets forth the required and authorized clauses for use in fixed price contracts for construction.

§ 1006.602 *Contract clauses.* (a) All fixed-price contracts for the construction, alteration, or repair (including painting and decorating) of public buildings or public works will include the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Changes as set forth below.

Changes. The Contracting Officer may at any time by written order, and without notice to the sureties, make changes, within the general scope of this contract, in the drawings and/or specifications of this contract. If any such change causes increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or performance schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this clause, must be asserted within thirty days from the date of receipt from the Contractor of the notice of change: *Provided, however* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(3) Changed conditions as set forth below.

Changed conditions. Should the Contractor encounter, or the Government discover, during the progress of the work, subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the plans and specifications, the attention of the Contracting Officer shall be called immediately to such conditions before they are disturbed. The Contracting Officer shall thereupon promptly investigate the conditions, and, if he finds that they do so materially differ, the contract shall be modified to provide for any increase or decrease of cost and/or difference in time resulting from such conditions.

(4) Extras as set forth in § 406.103-3 of this title.

(5) Inspection as set forth below.

Inspection. (a) All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by Government inspectors at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of

rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in clause 10 of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said clause 10 for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and tests that may be required by the inspectors. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size and performance tests shall be as described in the specifications. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(c) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and material. If such work is found to be defective in any material respect, due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications, and such inspection and acceptance, unless otherwise stated in the specifications, shall be final except as regards latent defects, departures from specific requirements of the contract and the specifications and drawings made a part thereof, damage or loss in transit, fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site.

(e) The Office designated as having responsibility for the inspection and supervision of the construction work under this contract is designated in the Schedule.

(6) Payments as set forth below.

Payments to Contractor. (a) Unless otherwise provided in the Schedule, progress payments will be made if specifically requested by the Contractor with properly prepared and certified invoices or vouchers accompanying such request. Progress payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, on estimates approved by the Contracting Officer. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

(b) In making such progress payments there shall be retained 10 percent of the estimated amount until final completion and acceptance of all work covered by the contract; provided, however, that the Contracting Officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may

make any of the remaining progress payments in full; and provided further, that on completion and acceptance of each separate building, vessel, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

(c) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Government to require the fulfillment of all of the terms of the contract.

(d) Upon completion and acceptance of all work required hereunder, the amount due the Contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein. Final payment will be withheld until clearance has been obtained from the Air Provost Marshal of the Air Force base or other installation concerned with respect to security matters including the return of all identification insignia such as passes and auto decals issued to Contractor's personnel for use in the performance of this contract.

(e) Invoices shall be prepared and submitted in quintuplicate with the following certification shown thereon:

"I certify that the above bill is correct and just and that payment therefor has not been received.

(Contractor)
By -----
(Title)

(7) Assignment of claims as set forth in § 406.103-8 of this title.

(8) Additional bond security as set forth in § 406.103-9 of this title.

(9) Federal, state, and local taxes as set forth in § 410.401 of this title. In addition thereto the subparagraph set forth in subparagraph (10) of § 1006.102 (a) may be included in said clause.

(10) Default as set forth below.

Default. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Schedule, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby. If the Contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor: *Provided*, That the right of the Contractor to proceed shall not be terminated under this clause because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor,

including, but not restricted to acts of God, or of the public enemy, acts of the Government (including, but not restricted to any preference, priority or allocation order), acts of another Contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes, if the Contractor shall within 10 days from the beginning of any such delay (unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract) notify the Contracting Officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of facts justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days, by the Contractor to the Secretary of the Air Force or his duly authorized representative, whose decision on such appeal as to the facts of delay and the extension of time for completing the work shall be final and conclusive on the parties hereto.

(11) Disputes as set forth in § 406.103-12 of this title.

(12) Notice and assistance as set forth in § 408.102 of this title.

(13) Buy American Act as set forth in § 406.103-14 of this title.

(14) Convict labor as set forth in § 411.203 of this title.

(15) Eight-Hour Law as set forth in § 411.303 of this title.

(16) Nondiscrimination in employment as set forth in § 411.803 of this title.

(17) Officials not to benefit as set forth in § 406.103-19 of this title.

(18) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(19) Termination for convenience of the Government as set forth in § 407.703 of this title.

(20) Davis-Bacon Act as set forth in § 411.405-1 of this title.

(21) Copeland Act as set forth in § 411.504-1 of this title.

(22) Overtime rates and shifts as set forth below.

Overtime rates and shifts. Where a single shift is worked, eight hours of continuous employment, except for lunch periods, shall constitute a day's work beginning on Monday and through Friday of each week. When work is required in excess of eight hours in any one day or during the interval from 5 p. m. Friday to 7 a. m. Monday, such work shall be paid for at not less than one and one-half times the basic rate wages. No premium wage or extra compensation shall be paid for work on customary holidays except that not less than time and one-half wage compensation shall be paid for work performed on any of the following days only: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Memorial Day. Where two or more shifts are worked, five consecutive days of 7½ consecutive hour shifts, from Sunday midnight to Friday midnight shall constitute a regular week's work. The pay for a full shift period shall be a sum equivalent to eight times the basic hourly rate, and for a period less than the full shift shall be the corresponding proportional amount which the time worked bears to the time allocated to the full shift period. Any time worked from Friday midnight to Sunday midnight or in excess of regular shift hours shall be paid for at not less than one and one-half times the basic rate of wages. Wherever found to be practicable, shifts should be rotated.

(23) Notice to Government of labor disputes as set forth in § 406.105-3 of this title.

(24) Liability for Government-owned property as set forth below.

Liability for Government-owned property. (1) Except as otherwise specifically provided, the Contractor shall not be liable for loss or destruction of or damage to "Government Property" (i. e., property of the Government in the possession or control of the Contractor in connection with this contract, other than property furnished by the Contractor title to which is vested in the Government by reason of the provisions of clause 6 (c) hereof entitled "Payments to Contractor") (i) caused by any peril while the property is in transit off the Contractor's premises, or (ii) caused by any of the following perils while the property is on the Contractor's or subcontractor's or other premises or by removal therefrom because of any of the following perils:

Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval, or air forces of the United States in resisting enemy attack.

The perils as set forth in (i) and (ii) above, are hereinafter called "excepted perils."

(2) The Contractor represents that it is not maintaining and agrees that it will not hereafter maintain insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to Government property caused by any excepted peril, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for such insurance.

(3) Upon the happening of loss or destruction of or damage to Government property caused by an excepted peril, the Contractor shall communicate with the Contracting Officer and with the Loss and Salvage Organization now or hereafter designated by the Contracting Officer, and with the assistance of that organization employed by the Contractor to perform services in accordance with instructions or regulations of the Government (unless the Contracting Officer directs that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of: (i) The lost, destroyed and damaged Government property, (ii) the time and origin of the loss, destruction or damage, (iii) all known interests in commingled property of which the Government property is a part, and (iv) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed the expenditures made by it in performing its obligations under this paragraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed direct), as approved by the Contracting Officer and set forth in a Supplemental Agreement.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to

the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Government property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract. In aid of its obligation so to return the Government property, the Contractor shall maintain a property control, accounting and maintenance system consistent with good business practice.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to Government property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(7) The Government shall at all times have access to the premises wherein any Government property is located.

(25) Property accountability as set forth below.

Property accountability. In the event Government property is furnished to the Contractor under this contract, the Contractor shall maintain necessary property control records and shall identify the Government Property as such in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" dated March 1951, which is incorporated herein by reference.

(26) Reporting of royalties as set forth in § 408.103 of this title.

(27) Patent indemnification of the Government by contractor as set forth in § 408.105 of this title.

(28) Specifications and drawings as set forth below.

Specifications and drawings. The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy in the figures, drawings, or specifications, the matter shall be immediately submitted to the Contracting Officer, without whose decision said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(29) Materials and workmanship as set forth below.

Materials and workmanship. Unless otherwise specifically provided for in the speci-

cations, all workmanship, equipment, materials and articles incorporated in the work covered by this contract are to be of the best grade of their respective kinds for the purpose. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials and articles installed or used without such approval shall be at the risk of subsequent rejection. The Contracting Officer may require the Contractor to remove from the work such employee as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest.

(30) Superintendence by contractor as set forth below.

Superintendence by contractor. The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

(31) Permits and responsibility for work as set forth below.

Permits and responsibility for work. The Contractor shall obtain all required licenses and permits. He shall be responsible for all damages to persons that occur as a result of his fault or negligence in connection with the prosecution of the work. Except for "Government Property," as defined in clause 24 (Liability for Government-owned Property), the responsibility for which is as stated in said clause, the Contractor shall be responsible for all loss or destruction of or damage to property that occurs as a result of his fault or negligence in connection with the prosecution of the work, and shall be responsible for all materials delivered and work performed until completion and final acceptance. Upon completion of the contract the work shall be delivered complete and undamaged.

(32) Other contracts as set forth below.

Other contracts. The government may award other contracts for additional work, and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.

(33) Loading and unloading of cars as set forth below.

Loading and unloading cars. The Contractor shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him, and shall provide storage facilities and other facilities necessary for these purposes; and the Contractor shall not order railway cars for loading unless they can be loaded

promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

(34) Accident prevention as set forth below.

Accident prevention. In order to protect the life and health of employees in the performance of this contract, the Contractor will comply with all pertinent provisions of the "Safety Requirements in Excavation—Building—Construction" approved by the Chief of Engineers, December 16, 1941, as revised January 1, 1946 (a copy of which is on file in the office of the Contracting Officer), and as may be amended, and will take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for this purpose. The Contractor will maintain an accurate record of and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all cases of death, occupational disease and traumatic injury arising out of or in the course of employment on work under this contract. The Contracting Officer will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or his representatives at the site of the work, shall be deemed sufficient for the purpose aforesaid. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or any part of the work. When satisfactory corrective action is taken, a start order will be issued. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(35) Military security requirements as set forth in § 406.104-12 of this title.

(36) Bonds as set forth below.

Bonds. If the amount of this contract is in excess of \$2,000.00, the Contractor shall execute and furnish forthwith the following Bonds:

(a) Performance Bond on Standard Form 25, or if the Bond is executed by two or more corporate sureties on Standard Form 25-B, in the penal sum of the amount set forth in the Schedule.

(b) Payment Bond on Standard Form 25-A, or if the Bond is executed by two or more corporate sureties on Standard Form 25-B, in the penal sum of the amount set forth in the Schedule.

(37) Subcontracts as set forth below.

Subcontracts. If this contract is in an amount which exceeds \$5,000.00, the following provisions are applicable to this contract:

(a) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

(38) Gratuities as set forth in § 406.104-16 of this title.

(39) Examination of records as set forth in § 406.104-15 of this title.

(40) Ceiling prices as set forth in § 406.103-22 of this title.

(41) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 408 of

this title will be used in accordance with instructions contained in said section and part. The clauses set forth in § 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(42) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(43) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b).

(44) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

SUBPART G—SALES CONTRACTS

§ 1006.701 *General.* Pending issuance of the portion of Part 406 of this title (Armed Services Procurement Regulation) relating to sales contracts, the following instructions will apply:

a. All formally advertised sales contracts will be prepared in the form of General Services Administration Standard Form 14.

b. All negotiated sales contracts will be prepared in a form as nearly similar to that used for advertised sales as the circumstances permit, and no such contracts will be awarded without the prior review and approval of the Commanding General, Air Materiel Command, or his duly authorized representative.

SUBPART H—BAILMENT CONTRACTS

§ 1006.801 *General.* This subpart sets forth the required and authorized clauses for use in master bailment agreements.

§ 1006.802 *Contract clauses.* (a) All master bailment agreements will consist of the following clauses in the following sequence:

(1) Definitions as set forth below.

Definitions. (a) The term "Contracting Officer" means the person executing this agreement on behalf of the Government, and any other officer or civilian employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this agreement, the authorized representative of a Contracting Officer acting within the limits of his authority.

(b) The term "AF Representative" as used herein means the Commander of the Air Procurement District or the Chief of the Air Regional Office having over-all administrative responsibility for the supplies or services contract in connection with which the property is bailed, or the Air Force Plant Representative for the Ballee's Plant.

(2) Property loaned under bailment agreement as set forth below.

Property loaned under bailment agreement. (a) The Government shall loan to the Contractor, hereinafter referred to as the "Ballee," only such property as may be authorized in a Supplies or Services Contract. Property loaned to the Ballee under a Bailment Agreement is hereinafter referred to as the "Bailed Property."

(b) Each loan of Bailed Property shall be evidenced by a "Bailment Agreement", signed by the Contracting Officer authorizing the loan. Each such agreement shall contain all pertinent information with respect to the particular loan, including the purpose of the loan and use to be made of the Bailed Property, an adequate description of the Bailed Property, authorization for any modifications which the Ballee may incorporate in the Bailed Property, the Contract-

tual authority under which the loan is being made, the place where the property is to be delivered to the Ballee and the place where the property is to be returned to the Government, the period of bailment, and provisions concerning any records to be maintained or reports to be furnished to the Government other than those required herein.

(3) Title as set forth below*

Title. Title to the Bailed Property shall at all times remain in the Government. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the provisions of the "Manual on the Control of Government Property in the Possession of Contractors" dated March 1951, which is incorporated herein by reference.

(4) Access of Government personnel to bailed property as set forth below*

Access of Government personnel to bailed property. (a) The Government shall, at all times, have access to any building or inclosure where any of the Bailed Property is located, for the purpose of inspecting same (or of removing same upon termination of the Bailment Agreement) or for the purpose of observing any experimental research, testing or development program in connection with Bailed Property and, in that connection, may be present at and may observe any tests pertaining thereto.

(b) In the event that the Government desires to test any of the Bailed Property during the period of Bailment, it shall have the right to do so at its discretion, but such test or tests shall be made by representatives of the Government, with Government pilots and at the expense and risk of the Government.

(5) Use of the Bailed Property and expenses in connection therewith as set forth below*

Use of the Bailed Property and expenses in connection therewith. (a) The Ballee shall use the Bailed Property covered by any Bailment Agreement only for the purposes specified in said agreement.

(b) If aircraft constitutes Bailed Property hereunder, no flight shall be made except for the purposes stated in the applicable Bailment Agreement or as required for maintenance or replacement of parts of the aircraft or to enable Ballee to restore or prepare the aircraft for return to the Government in accordance with the provisions of clause 11 hereof. Flight crews furnished by the Ballee must receive written approval of the AF Representative prior to flight, in accordance with AMC Regulation 60-3 or such superseding regulation as may be in effect at the time of the applicable Bailment Agreement issued hereunder.

(c) If aircraft used for testing constitutes the Bailed Property hereunder, Aircraft Utilization Reports shall be rendered weekly by the Ballee in accordance with AMC Regulation 80-2 or such superseding regulation as may be in effect at the time of the applicable Bailment Agreement.

(d) None of the Bailed Property shall be removed by the Ballee from the continental limits of the United States without prior written approval of the AF Representative.

(e) The Ballee agrees that it shall, without cost to the Government under this Bailment Agreement, furnish all equipment, materials including fuel and lubricants (other than parts furnished by the Government pursuant to clause 8 of this agreement), skilled pilots, engineering, labor, and other personnel necessary in connection with any use of the Bailed Property. However, nothing herein contained shall be deemed to prevent Ballee from being reimbursed under a

cost-plus-a-fixed-fee supply or service contract between the Government and the Ballee for the cost of such equipment, materials and services in connection with use applicable thereto, or shall be deemed to prevent Ballee from including, in any price charged to the Government under a fixed-price supplies or service contract, a charge representing a reasonable allowance for the costs of such equipment, material and services in connection with use applicable thereto. Ballee shall not be entitled to reimbursement of cost under any cost-plus-fixed-fee contract or adjustment of prices under any fixed-price contract solely by reason of any Bailment Agreement.

(6) Modifications of Bailed Property as set forth below*

Modifications of Bailed Property. Unless otherwise specifically provided in a Bailment Agreement, the Ballee shall not modify in any manner, Bailed Property or parts thereof.

(7) Maintenance of Bailed Property as set forth below*

Maintenance of Bailed Property. (a) Ballee shall conduct an initial inspection upon receipt of the Bailed Property to determine its condition, shall maintain records of such inspection and shall maintain the Bailed Property in good repair and condition at all times thereafter until returned to the Government. Except as hereinafter stated, such maintenance of each item of Bailed Property shall be accomplished by Ballee in accordance with the basic Technical Order Service Handbook for such property provided by the Government. However, if there is no handbook applicable to the particular item of Bailed Property, maintenance by Ballee shall conform to good industrial practice. Ballee shall accomplish and maintain current records of all such maintenance for review by the AF Representative.

(b) If aircraft or aircraft engines constitute Bailed Property hereunder, the Ballee shall comply with the current issue of AF Technical Order 02A-1-1 or 02B-1-1 as applicable and with the current issue of AF Technical Order 00-20A-1. In addition, Ballee shall also comply with the provisions with respect to visual inspection contained in any other Technical Orders applicable to the particular aircraft bailed hereunder from and after the date or dates upon which such Technical Orders are furnished to Ballee by the Government. The Ballee shall also make entries required by the current issue of AF Technical Order 00-35D-263 and 01-1-81 in Form 263. Ballee shall not be required to perform overhauls of aircraft or aircraft engines. Necessary compliance with Technical Orders and related maintenance requirements relating to bailed aircraft or aircraft engines, other than those enumerated above shall be accomplished by the Government: *Provided, however, That* Ballee may, with the prior written consent of the AF Representative, comply with "Red Cross Technical Orders" or "Red Diagonal Technical Orders" which Ballee is able to accomplish properly with the facilities and personnel available to the Ballee.

(c) The Government, acting through the AF Representative, shall have the right at its discretion to take possession of or ground (in case of aircraft) any of the Bailed Property at any time, to accomplish compliance with any Technical Orders or maintenance requirements relating thereto.

(d) The Ballee shall conduct periodic surveys to confirm the condition, adequacy of storage facilities, and necessity for retention of all Bailed Property and shall promptly correct any unsatisfactory maintenance or storage conditions. These periodic surveys shall be conducted in addition to or concurrently with all other inspection and Technical Order compliance requirements of this agreement and shall in no way affect such

other requirements. The Ballee shall maintain records of such periodic surveys for review by the AF Representative. Frequency of such surveys shall be in accordance with the following:

(1) Not less than once every three months for aircraft, engines, motorized equipment, mechanically or electrically operated equipment and similar property.

(2) Not less than once every six months for other property.

(8) Replacement parts as set forth below*

Replacement parts. (a) If the Contracting Officer determines it to be advantageous to the Government, the Government may, at its expense, furnish to the Ballee at the place where the Bailed Property is located:

(1) Such replacement parts as may be required from time to time for such Bailed Property because of (i) reasonable wear and tear resulting from authorized usage or (ii) loss or destruction of or damage to such Bailed Property for which the Ballee is not liable under the provision of clause 13 hereof; and

(2) Such new or additional parts as may be required from time to time for installation in or on such Bailed Property to accomplish compliance with Technical Orders.

(b) If aircraft constitutes Bailed Property hereunder the Government, at the request of the Ballee, shall deliver to the Ballee at the place where the Bailed Property is then located:

(1) Such replacement parts as may be required from time to time as determined by the Contracting Officer as necessary replacement on such aircraft because of (i) reasonable wear and tear resulting from authorized usage or (ii) loss or destruction of or damage to such bailed aircraft for which the Ballee is not liable under the provisions of clause 13 hereof; and

(2) Such new or additional aircraft parts as may be required from time to time as determined by the Contracting Officer to be necessary for installation in or on such bailed aircraft to accomplish compliance with applicable Technical Orders.

(c) All parts furnished by the Government pursuant to this clause shall be accounted for as Government-furnished property in accordance with Manual for Control of Government Property in Possession of Contractor, dated March 1951.

(9) Duration as set forth below*

Duration. (a) The period of time during which Bailed Property may be loaned to the Ballee shall be set forth in the Bailment Agreement and shall not extend beyond the date upon which the purpose of the bailment has been accomplished and in any event shall expire on the date of delivery or time of performance set forth in the supplies or services contract in connection with which the property is being loaned: *Provided, however, That* the Government may, at its sole will, prior to the date specified in the Bailment Agreement terminate such agreement. The Government may provide for the retention by the Ballee of any item of Bailed Property for use in connection with other specific supplies or service contracts if authorized by such contracts by means of an additional Bailment Agreement.

(b) In the event the purpose of the Bailment is accomplished prior to the date of expiration of the bailment period stated in the Bailment Agreement, the Ballee shall notify the Contracting Officer and request disposition instructions for the Bailed Property.

(10) Delivery of Bailed Property to the Ballee as set forth below:

Delivery of Bailed Property to the Ballee. The Government shall deliver the Bailed Property to the Ballee at the location spec-

ified in the Bailment Agreement issued pursuant hereto as soon as possible after issuance of such agreement.

(11) Return of Bailed Property to the Government as set forth below*

Return of Bailed Property to the Government. (a) Bailed Property shall be returned to the Government in as good condition as when delivered to the Bailee except for reasonable wear and tear or depreciation resulting from authorized use.

(b) Upon expiration or termination of any Bailment Agreement, the Bailee shall immediately discontinue use of all Bailed Property furnished pursuant to such agreement; and the Bailee shall restore such Bailed Property to the same condition as it was in when delivered to the Bailee, reasonable wear, tear and usage excepted, unless the Contracting Officer directs the Bailee in writing to return the Bailed Property as modified in accordance with the Bailment Agreement covering said property. If the Contracting Officer gives such a direction, Bailee may remove from the Bailed Property any equipment installed by Bailee which is owned by the Bailee and shall make such repairs and installations as may be necessary to restore the Bailed Property to the same working condition such property was in when received by Bailee, reasonable wear, tear, usage and authorized modifications excepted. Any of the Bailed Property not permanently installed in aircraft constituting Bailed Property hereunder or any aircraft which cannot be returned as provided in paragraph (c) below, shall be properly packed, boxed and crated by the Bailee for return to the Government. Upon compliance with the foregoing, a certificate from the AF Representative to the effect that the Bailed Property is in, or has been restored to, the condition required by this clause shall be furnished to the Bailee. Nothing contained in this paragraph shall be deemed to require the Bailee to assume the cost of restoring or repairing property damaged or destroyed or to assume the cost of replacing any loss as to which the Bailee is relieved from liability under the provisions of clause 13 of this agreement.

(c) If aircraft constitutes Bailed Property hereunder, such aircraft, unless grounded, shall, subject to the provisions of paragraph (b) above, be prepared by Bailee for flyaway by a Government pilot and Bailee shall furnish without cost to the Government under any Bailment Agreement all aircraft engine fuel, lubricating oil and cooling fluid required for said flyaway in the amount to be designated by the Government pilot. All aircraft prepared for flyaway as provided herein and property permanently installed in such aircraft shall be delivered to the Government at such flying field as may be designated as the point for such delivery in the applicable Bailment Agreement or, in the absence of such designation, at a flying field designated by the Contracting Officer in the vicinity of the Bailee's plant. Any aircraft which is grounded shall be prepared for shipment and return to the Government in accordance with instructions furnished by the Contracting Officer.

(d) If property other than aircraft is to be shipped at the expense of the Government, it shall be shipped on Government bills of lading, and the Bailee shall make application therefor on forms furnished by the Government. Descriptions inserted in Government bills of lading shall comply with the rules and provisions of the freight classifications and tariffs of the carrier or carriers involved. Such Bailed Property shall be returned to the Government as follows:

(1) Any shipment occupying sufficient space in a railroad car to constitute a shipment subject to carload freight rates shall be delivered f. o. b. carrier's equipment at the location specified in the Bailment Agreement, and

(2) Any shipment subject to less-than-carload freight rates shall be delivered f. o. b. freight station at such location.

(12) Liquidated damages as set forth below*

Liquidated damages. (a) If aircraft constitutes Bailed Property hereunder and if the Contractor fails to return the aircraft on the date specified in the Bailment Agreement for such return (or as the same may be extended in writing by the Contracting Officer), the actual damage to the Government for the delay will be impossible to determine, and therefore in lieu thereof the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount set forth in the Bailment Agreement loaning such aircraft and designated as "Liquidated Damages"

(b) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, under this Bailment Agreement, or under any supplies contract authorizing the loan of the aircraft bailed hereunder.

(13) Risk of loss or damage, and liability for Bailed Property as set forth below*

Risk of loss or damage, and liability for Bailed Property. (a) The Bailee shall be liable for all loss or destruction of or damage to Bailed Property except as otherwise provided by the terms of this clause.

(b) The Bailee shall not be liable for loss or destruction of or damage to the Bailed Property provided such loss is:

(1) Caused by reasonable wear and tear or depreciation resulting from authorized use; or

(2) Caused by any peril while the property is in transit off the Bailee's premises; or

(3) Caused by any of the following perils while the property is on the Bailee's or a subcontractor's premises or other premises, or by removal therefrom because of any of the following perils: Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke, sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby, rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack; or

(4) Caused by any other peril unless such loss, damage or destruction occurred by reason of failure of the Bailee or of any of its directors, officers, agents, or employees who have supervisory or directional control of all or a part of the operations of the Bailee to exercise with respect to such Bailed Property the same degree of care which a reasonably prudent businessman, operating under currently comparable circumstances, would exercise with respect to his own property of the same type.

(c) If aircraft constitutes Bailed Property hereunder the Bailee shall not be liable for loss or destruction of, or damage to such aircraft occurring during the course of operation of such aircraft nor to Bailed Property hereunder which at the time of such loss, destruction or damage, is being used in or on an aircraft during the operation of such aircraft if personnel conducting such operation were either (1) furnished by the

Government or (2) approved in writing by the AF Representative in accordance with clause 5 above, and if the Bailed Property is at the time of such loss, destruction or damage, being used for purposes authorized by the applicable Bailment Agreement. The term "operation" as used herein includes both flight and ground operations, and includes the operation of the airplane, prime and auxiliary power plants, the landing gear controls, the flight controls and brakes and, while the airplane is being towed, the operation of any vehicle used in such towing.

(d) Bailee represents that it is not maintaining and will not hereafter maintain insurance (including self-insurance funds and reserves) covering loss or destruction of or damage to the Bailed Property for which it is relieved of liability by paragraphs (b) and (c) of this clause, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for such insurance; provided, however, that nothing contained in this paragraph shall be deemed to apply to insurance approved or required by the Contracting Officer pursuant to any cost-type contract between the Government and the Bailee. If any sums shall be recovered by the Bailee as the proceeds of insurance policies applicable to the Bailed Property, the Bailee shall equitably reimburse the Government. The Bailee agrees that it will do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of or damage to the Bailed Property, and will on request cooperate with the Government in effecting recovery against such third parties.

(14) The clauses required by §§ 406.-103-15, 406.103-16, 406.103-18, 406.103-19 and 406.103-20 of this title are included in this agreement.

SUBPART I—FACILITIES CONTRACTS

§ 1006.901 General. This subpart sets forth required and authorized clauses for use in contracts whereby the Government furnishes to the contractor facilities, including those whereby, as a portion thereof the contractor furnishes, or acquires, additional facilities for the Government.

Note: As of this date, contracts whereby the Government, only, furnishes facilities, are not set forth in this subpart.

§ 1006.902 Contract clauses. (a) All contracts for furnishing facilities to a contractor, and which contracts also provide for the manufacture, supply, or acquisition by the contractor of facilities will be prepared and issued solely by Headquarters, Air Materiel Command and/or such other activity as may be designated by Headquarters, Air Materiel Command, and will include the following clauses in the following sequence:

(1) Facilities to be provided as set forth below*

Facilities to be provided—(a) By the Contractor. (1) The Contractor shall with due expedition perform the items of work set forth in Part 1 of the attached Schedule, subject to the approval requirements set forth therein, for the consideration set forth in Part 5 of said Schedule.

(2) The approvals required for the foregoing shall be requested by the Contractor prior to performance; but the Contracting Officer may at his discretion grant such approvals subsequent to performance with like effect as if granted prior to performance. Normally, no item shall be approved for manufacture or acquisition hereunder until it has been determined that a suitable like item cannot be furnished by the Government

(Department of the Air Force) out of its Industrial Reserve; however, such requirement can be waived solely at the discretion of the Contracting Officer.

(3) The Government reserves the right to furnish to the Contractor f. o. b. cars or carrier's equipment at Contractor's plant or at the point nearest thereto that rail carrier service is available any or all of the facilities to be provided by the Contractor hereunder in lieu of the providing thereof by the Contractor. In the event the Government exercises this right this contract shall be considered terminated to the extent necessitated by such furnishing.

(b) *By the Government.* (1) The Government shall furnish to the Contractor the existing Government-owned facilities set forth in Part 2 of the attached Schedule. Such property shall become subject to all the terms and conditions hereof upon receipt thereof by the Contractor unless another effective date is specified in Part 2 of the attached Schedule.

(2) Such facilities shall be provided without warranty expressed, or implied on the part of the Government as to serviceability or fitness for use, subject to the right of the Contractor seasonably to inspect and reject the same for good and sufficient reason. All personal property included in the facilities provided pursuant to this paragraph (b) not presently located at the location specified in Part 3 of the attached Schedule, will be delivered to the Contractor at such plant or at the point nearest thereto that rail carrier service is available, as soon as practicable after the date of approval of this contract, transportation charges prepaid.

(2) Factual appendices as set forth below:

Factual appendices. Within three months after the date of approval of this contract, and at three-month intervals thereafter during the life of this contract, Contractor shall submit a list of the facilities provided hereunder and not previously listed, together with a list of any necessary changes or deletions of items on previous lists: *Provided, however,* That no such lists shall be required for any period in which there have been no additions to or changes or deletions of previous listings. Such lists will be identified as "Factual Appendix A" to this contract or supplements to such appendix. They will contain (1) a summary, by categories, of expenditures to date under this contract, (2) a list of all recoverable items of property provided hereunder for which reimbursement is made hereunder and (3) a list of Government-furnished property provided hereunder and shall be in a form to be agreed upon between the Contractor and the Contracting Officer. Such lists shall be certified as correct by a responsible representative of the Contractor. Upon approval thereof by the Contracting Officer they will be transmitted to Headquarters, Air Materiel Command. Upon approval and distribution thereof such lists shall be considered incorporated herein by reference, it being understood, however, that such lists will be binding upon the parties hereto only to the extent that they do not conflict with the supporting documentation.

(3) Place and time of installation as set forth below:

Place and time of installation. The facilities provided hereunder as described in clause 1 hereof shall be located or installed in the location set forth in Part 3 of the attached Schedule. The Contractor agrees to use its best efforts to have such facilities installed and/or otherwise prepared for use on or before the date set forth in Part 4 of the attached Schedule.

(4) Title as set forth below:

Title. (a) Title to all property furnished by the Government shall remain in the Govern-

ment. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(b) All personal property for the cost of which the Contractor is entitled to be reimbursed hereunder and all other Government-owned personal property provided hereunder shall remain personally although affixed to realty not belonging to the Government.

(5) Workmanship as set forth below:

Workmanship. All work required under this contract shall be executed in the most economical and workmanlike manner in strict conformity with the best standard practices and all material, workmanship and facilities shall be subject to inspection and test by representatives of the Government.

(6) Use and charges therefor as set forth below:

Use and charges therefor. (a) The Contractor may, subject to the termination provisions hereof, use all or part of the facilities provided hereunder without charge in the performance of (i) all negotiated Air Force prime contracts which authorize such no charge use or the price or fee of which is contingent upon such no charge use, (ii) subject to the approval of the Contracting Officer, subcontracts under any such Air Force prime contracts and (iii) to the extent such use will not interfere with the foregoing and subject to the approval of the Contracting Officer, prime and subcontracts of other Government agencies which authorize such no charge use or the price or fee of which is contingent upon such no charge use.

(b) The Contractor may also, with the prior approval of the Contracting Officer, use the facilities provided hereunder in the performance of incidental work other than that hereinabove authorized to the extent that such additional work will not interfere with the performance of the work hereinabove authorized: *Provided,* That the Contracting Officer determines that such other use is in the interest of the Government, and that the Contractor is not thereby placed in a favored competitive position. At six months' intervals during the life of the contract and at the termination thereof Contractor shall submit a detailed report to the Contracting Officer of all such other use performed during the preceding period. Such reports shall be supported by such records as are necessary to insure equitable action hereunder. Upon submission of such report the Contractor and the Contracting Officer will promptly negotiate to determine the extent of use during the period covered by such report and the consideration therefor. Such amount shall be computed upon the basis of the extent of the use at rates based upon actual or estimated original acquisition cost of the facilities used. Such rates shall be 5 percent per annum for land and land improvements, 8 percent per annum for buildings and building installations, 12 percent per annum for machinery and equipment and 25 percent per annum for portable tools and automotive equipment. In the event of a failure to agree in such negotiations the resulting dispute shall be settled in accordance with the procedures provided in the clause hereof entitled "Disputes." The Contractor shall upon demand of the Contracting Officer except in the event an appeal

is pending or to be filed forward his check payable to the Treasurer of the United States for the amount due through the Contracting Officer to the Commanding General, Headquarters, AMC, Wright-Patterson Air Force Base, Ohio, Attention MCCBXA.

(c) The Contractor represents that it has eliminated or will eliminate from the prices and, for the purpose of computing fees, from the estimated cost, charged for all contracts to be performed by the Contractor using facilities provided hereunder on a no-charge basis any charges or allowances (including amortization and depreciation) included therein for the facilities provided hereunder exclusive of charges for costs incurred in the performance of obligations imposed hereunder, and in making application for permission to use facilities provided hereunder, Contractor shall so state. It is agreed that nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed hereunder and not made reimbursable hereunder.

Note: Where appropriate, the clause as set forth in subparagraph (6) following shall be used in lieu of that set forth above.

(6) Use and charges therefor as set forth below:

Use and charges therefor. (a) The Contractor may, subject to the termination provisions hereof, use the facilities provided hereunder in the production under Government prime or subcontracts of the items for which they were provided.

(b) The Contractor may also, with the prior approval of the Contracting Officer, use the facilities provided hereunder in the performance of incidental work other than that hereinabove authorized to the extent such additional work will not interfere with the work hereinabove authorized; provided that, the Contracting Officer determines that such other use is in the interest of the Government and that the Contractor is not thereby placed in a favored competitive position.

(c) In consideration for such use Contractor shall pay a use charge computed at the following rates:

Land and land improvements, 5 percent per annum; buildings and building installations, 8 percent per annum; machinery and equipment, 12 percent per annum; portable tools and automotive equipment, 25 percent per annum.

Such use charge shall be computed upon the cost to the Government of the items of facilities for which reimbursement is made hereunder exclusive of the cost of transportation, where transportation costs are invoiced separately, and installation, and upon the actual or, when actual is not available, the estimated original acquisition cost of the items of facilities furnished by the Government hereunder (exclusive of the cost of transportation, installation, and repair), as such costs are agreed upon with the Contracting Officer. Such charges shall be computed on the basis of calendar months of use; provided that, (i) in the event that any item of facilities is not used for a period of fifteen consecutive calendar days in any calendar month, the charge payable for such item of facilities shall be one-twenty-first ($\frac{1}{21}$) of the monthly charge for each day or part thereof in said calendar month that such item is used; and provided that (ii) a prorated charge shall be made for fractional calendar months at the commencement of use of each item and at the effective date of the total or partial termination of this contract. Payment of such monthly rental charges shall be due on the fifteenth of each calendar month for the preceding calendar month's use and shall be effected by mailing or delivering to the Contracting Officer a check payable to the Treasurer of the United States accompanied by a statement in triplicate.

RULES AND REGULATIONS

cate explaining the computation of the amount thereof.

(d) It is agreed that nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for the cost of performing obligations imposed hereunder and not made reimbursable hereunder.

(7) Reimbursement as set forth below:

Reimbursement. (a) The Government will pay to the Contractor upon inspection and acceptance by the Contracting Officer of the items or the work specified in Part 1 of attached Schedule, subject to the provisions of paragraph (c) of this clause, the direct costs and the overhead designated in Part 5 of the attached Schedule determined in accordance with Part 2, Section XV of the Armed Services Procurement Regulation for items other than construction, and in accordance with Part 4 of said Section XV for items of construction, if any.

(b) It has been determined by the Contracting Officer in advance and agreed to by the contracting parties for the purpose of simplifying auditing procedures applicable thereto, that the overhead rate or rates set forth in Part 5 of the attached Schedule represent an amount equal to a reasonable and proper proportionate share of all of the Contractor's overhead and General and Administrative expense applicable and allocable to the performance of this contract and as excluding any expenditures for items of cost for which direct reimbursement is provided elsewhere in this contract. Unless the prior approval of the Contracting Officer is obtained, the Contractor shall not change its method of accounting under this contract in such manner as to account for any item of cost on a direct cost basis if such item of cost was considered as an indirect charge for the purpose of establishing the overhead rate or rates set forth in Part 5 of the attached Schedule. All amounts reimbursed hereunder shall be withdrawn from the appropriate overhead pool or pools prior to the allocation of overhead to other contracts with the Government or Suppliers of the Government and nothing in this contract shall be interpreted as prejudicing any rights that the Contractor may have to be reimbursed under other contracts between the parties hereto for overhead including General and Administrative expense allocable to this contract in excess of the amount made reimbursable hereunder for such costs.

(c) The Government will currently reimburse the Contractor for such expenditures made in accordance with this clause as may be approved or ratified by the Contracting Officer upon certification and verification by the Contracting Officer of the original signed payrolls for labor, the original paid invoices for facilities and materials, or other original papers: *Provided, however* That in the event it is impracticable to furnish the Contracting Officer with original signed payrolls for labor, original paid invoices for facilities and materials, or other original papers, the Contractor shall furnish evidence in a form satisfactory to the Contracting Officer covering expenditures to be reimbursed under this clause. Generally payments hereunder will be made monthly, but may be made at more frequent intervals if the conditions so warrant. Such current reimbursement shall include partial and progress payments made to subcontractors or suppliers for machine tools and/or construction projects ordered hereunder in those cases where the subcontractor or supplier requires partial payment therefor and the subcontract or purchase agreement therefor contains a partial payments clause approved in writing by the Contracting Officer and not less favorable to the Government than the partial payments clause set forth in Joint Procurement Regulation 5-407.2; provided that each such par-

tial payment is specifically approved in writing by the Contracting Officer.

(d) There has been allotted for the performance of this contract the total sum set forth in Part 6 of the attached Schedule. This sum may be increased from time to time by the Government solely in its discretion. Upon the making of any such increase the Contracting Officer shall amend this contract accordingly. Notwithstanding any other provisions of this contract the Contractor shall not be bound to take any action in connection with the performance of this contract that would cause the amount for which the Government will be obligated hereunder to exceed the sum allotted for this contract, and the obligation of the Contractor to proceed with the performance of this contract shall be limited accordingly. If at any time the Contractor has reason to believe that the amount to be expended or committed by it in the next succeeding 30 days, when added to all previous expenditures and commitments will exceed 75 percent of the sum allotted for this contract, it shall notify the Contracting Officer to that effect, giving an estimate as to the percentage of completion of the items of work set forth in Part 1 of the attached Schedule, so that a determination may be made as to whether or not additional funds will be allotted for this contract. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor either for the reimbursement of expenditures or otherwise any amount in excess of the sum allotted for this contract: *Provided, however*, That if the Contractor makes any expenditures for which funds are not allotted, the Contracting Officer may ratify such expenditures when funds are allotted.

(e) In securing all facilities, parts, materials and services required for the performance of this contract from sources other than the Contractor, the Contractor shall obtain competition to the maximum practical extent and shall take advantage of the most advantageous prices with due regard to securing adequately prompt delivery of satisfactory facilities, parts, materials and services.

(f) The Contractor represents that the costs incurred and for which it is reimbursed under this contract are not and will not be included as an element of cost in any other contracts with the Government or suppliers of the Government and that the overhead rate or rates set forth in Part 5 of the attached Schedule do not include any allowance for profit.

(g) The cost-plus-a-percentage-of-cost system of contracting shall not be used by the Contractor in procuring articles, materials, supplies or services required for the performance of this contract.

(h) Overtime work for which compensation at rates in excess of regular or straight time compensation will be charged shall be performed hereunder only to the extent expressly authorized in writing by the Contracting Officer.

Note: Provisions of the reference "Part 2, Section XV of the Armed Services Procurement Regulation" in a foregoing clause are contained in Subpart B, Part 414 of this title. Provisions of the reference "Part 4 of Section XV" in a foregoing clause are contained in Subpart D, Part 414 of this title.

(8) Right of diversion as set forth below:

"Right of diversion. The Government reserves the right when it is determined by the Air Force to be in the best interest of the Government to direct the delivery of any or all of the facilities acquired by or furnished to the Contractor hereunder to locations other than those specified in this contract. It is also agreed that the Contractor shall at the request of the Contracting Officer, when

it is determined by the Air Force to be in the best interest of the Government, assign to the Government or to any designated third party or parties, purchase orders or subcontracts of the Contractor for any or all of the facilities to be acquired under this contract.

(9) Taxes and utilities as set forth below:

Taxes and utilities. (a) The Contractor agrees to pay to proper authority when and as the same become due and payable, all taxes, assessments and similar charges which at any time prior to the final settlement of this contract are properly and legally taxed, assessed or imposed upon the Contractor's interest made or created pursuant to the provisions of this contract, with respect to part or all of the facilities provided hereunder or the use thereof.

(b) The Contractor agrees to pay all claims or charges for or on account of water, light, heat, power and any other services or utilities furnished to or with respect to the site, buildings, or the machinery and equipment or any part thereof.

(10) Access as set forth below:

Access. The Government shall at all times have access to the premises wherein any of the facilities provided hereunder are located for the purpose of inspecting and inventorying the same or for the purpose of removing them as authorized under the terms of this contract.

(11) Report to be furnished by the contractor as set forth below:

Reports to be furnished by the contractor. The Contractor, insofar as it is able, shall furnish the Government, upon written request therefor, such reports, estimates, and other information regarding the subject matter of this contract as the Contracting Officer finds necessary and reasonable. Requests for such reports, estimates and other information shall set forth the nature of the information sought and the form in which such information is to be furnished.

(12) Records and books of account as set forth below:

Records and books of account. (a) The Contractor agrees to keep records and books of account, showing the cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The method of accounting used by the Contractor shall be subject to the approval of the Contracting Officer; provided, no material change will be required therein if it conforms to good accounting practice and the costs are readily ascertainable therefrom. The Contractor shall preserve all books, papers and other accounting records pertaining to work under this contract for a period of at least five years after the signing of the final termination settlement agreement for this contract. If at any time after such five-year period has expired, the Contractor desires to dispose of any of said books, papers or accounting records, he shall notify and request permission from the Contracting Officer, who shall either authorize their destruction, unless applicable statutes otherwise direct, or notify the Contractor to turn them over to the Government.

(b) The Contractor agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Department.

(c) The Contractor shall cause a provision corresponding to that contained in para-

graph (b) hereof to be included in all subcontracts hereunder.

(d) The Contractor also agrees to maintain adequate property control records and a system of identification of the facilities provided hereunder in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" in effect on the date of this contract. As part of such control system Contractor shall take a physical inventory of the facilities provided hereunder at least once a year. A certificate of such inventory listing and properly identifying all losses and damages which have occurred since the taking of the last previous inventory shall be delivered to the Contracting Officer upon the completion of each such inventory.

(13) Possession as set forth below

Possession. Except as otherwise in this contract specifically provided, the Contractor shall not remove or otherwise part with the possession of any of the facilities provided hereunder, pledge or assign, transfer or purport to transfer title to any of such facilities in any manner to any third person either directly or indirectly, permit the use by others of any of such facilities, nor do or suffer anything to be done whereby any of such facilities may be seized, taken in execution, attached, destroyed, or injured.

(14) Liability for Government-owned property as set forth below

Liability for Government-owned property.

(a) Contractor shall not be liable for any loss or damage to the facilities provided hereunder or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto)

(i) Which results from any risk other than an "excepted" peril. For this purpose excepted perils are defined as any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located; or by removal therefrom because of any of the following perils:

(I) Fire; lightning; windstorm, cyclone, tornado, hail, explosion; riot; riot attending a strike, civil commotion, vandalism and malicious mischief, sabotage, aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby, rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any Government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces, or

(II) Other peril of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

(ii) Which results from a risk expressly required to be insured against hereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater;

(iii) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iv) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on

the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (A) all or substantially all of the Contractor's business, or (B) all or substantially all of the Contractor's operations at the industrial facility if such facility is a complete plant or unit, or (C) all or substantially all of the Contractor's operations at any one plant or separate location in which such industrial facilities are installed or located, or (D) any separate or complete major industrial operation in connection with which the facilities are used; or

(v) Which results from (A) a failure of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (iv) above, to maintain and administer in accordance with sound industrial practices a program for the maintenance, repair, protection and preservation of the industrial facilities in accordance with the provisions of clause 18 hereof, so as to assure their full availability and usefulness at all times, or (B) a failure of the Contractor to take all reasonable steps to comply with all written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the industrial facilities.

(b) The Contractor represents that it is not including and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the facilities provided hereunder caused by any excepted peril.

(c) Upon the happening of loss or destruction of or damage to any Government-provided property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-provided property from further damage, separate the damaged and undamaged Government-provided property, put all the Government-provided property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-provided property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-provided property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (c) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(d) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the facilities provided herein caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(15) Responsibility for damages as set forth below:

Responsibility for damages. (a) The Contractor shall hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities provided hereunder, except when there is in effect one or more contracts with Contractor for supplies or services which require the use of such facilities.

(b) If this contract calls for labor to be performed, the costs of which are reimbursable hereunder, Contractor shall carry workmen's compensation and public liability insurance and, to the extent applicable, automobile liability insurance together with such other insurance, (exclusive of insurance which is otherwise prohibited hereunder) as the Contracting Officer may direct.

(c) The Government shall not be liable to the Contractor for damages or loss of profits by reason of non-delivery or of any delay in the delivery of any or all of the facilities to be provided by the Government hereunder.

(16) Government bills of lading as set forth below

Government bills of lading. All shipments of the facilities provided hereunder, title to which is vested in the Government, shall, subject to the approval of the Contracting Officer, be made on Government bills of lading and the Contractor shall make application therefor on ALC Form No. 63A to the Officer in Charge, Air Materiel Command Field Traffic Office, serving the Air Force Procurement District having administrative responsibility for this contract.

(17) Subcontracts as set forth below

Subcontracts. The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order hereunder which is either (I) on other than a straight fixed-price single payment basis, or (II) on a fixed-price basis exceeding in dollar amount either \$25,000 or 5 per centum of the total estimated cost of this contract whichever is less; and each such subcontract or purchase order shall require the written approval of the Contracting Officer.

(18) Maintenance as set forth below:

Maintenance. Except to the extent of any loss or destruction of or damage to the facilities provided hereunder for which the Contractor is relieved of liability under the provisions of the clause hereof entitled "Liability for Government-Owned Property" and except for reasonable wear and tear or depreciation, the facilities shall be returned by the Contractor to the Government, or delivered by the Contractor to any designee of the Government (at the time elsewhere in this contract provided) in as good condition as when received or restored by the Contractor in connection with this contract. The Contractor shall also maintain a program approved by the Contracting Officer for the proper maintenance, repair, protection, and preservation thereof in accordance with sound industrial practice, including normal parts replacements and, with respect to machinery and equipment, necessary rebuilding and rehabilitation. The maintenance of any motor vehicles provided under this contract shall be in accordance with standards prescribed by the Air Force as directed by the Contracting Officer. As soon as practicable after the execution of this contract the Contractor shall submit to the Contracting Officer for approval a detailed statement of the maintenance program proposed to be maintained under the requirements of this clause. Upon approval thereof by the Contracting Officer such program shall not be relaxed or deviated from without the prior approval of the Contracting Officer.

RULES AND REGULATIONS

(19) Termination as set forth below.

Termination. (a) This contract may be terminated by the Government as to all or any of the facilities provided hereunder (i) whenever the Contracting Officer shall determine that the facilities to be so terminated are not necessary for the performance of Government contracts in the performance of which the use of such facilities has been authorized, (ii) whenever the Commanding General, Air Matériel Command, or his duly authorized agent, has requested priority with respect to the manufacture or furnishing of any products with facilities to be provided hereunder and the Contractor has failed or refused to give such priority, (iii) whenever a receiver or trustee has been appointed for the Contractor or its property, or the Contractor has made assignment for the benefit of creditors, or the Contractor has become insolvent, or a petition has been filed by or against the Contractor pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating the Contractor a bankrupt or for a reorganization of the Contractor or for the purpose of effecting a composition or a rearrangement with the Contractor's creditors and such petition filed against the Contractor was not dismissed within sixty (60) days, (iv) whenever there has been a violation of the terms, conditions or covenants of this contract or extension thereof by the Contractor and the Contractor failed to cure such violations within thirty (30) days from the date of notice thereof by the Government to the Contractor, or (v) upon not less than sixty days' notice to the Contractor for any other reason. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the contract is to be terminated and the reason therefor if under (i), (ii), (iii), or (iv) hereof, and shall be effective upon the dates specified therein.

(b) This contract may be terminated by the Contractor at any time, upon not less than sixty days' notice to the Government, as to all of the facilities provided hereunder. Such termination shall be effected by delivery by the Contractor to the Contracting Officer of a Notice of Termination specifying the date on which such termination shall become effective. Contractor may also by agreement with the Contracting Officer effect a partial termination of this contract with respect to a substantial portion of such facilities. Termination at the option of the Contractor shall not relieve the Contractor of any of its obligations or liabilities under any supply or service contract affected thereby.

(c) Upon total or partial termination of this contract, the Contractor shall, subject to the provisions of the clause hereof entitled "Disposition of Facilities" surrender to the Government possession of any facilities affected thereby.

(d) In the event any facilities are to be purchased or constructed hereunder by the Contractor in behalf of the Government, upon termination hereunder by the Government of any such purchased or constructed facilities prior to the completion thereof, the Contracting Officer shall, subject to the provision of the clause hereof entitled "Disposition of Facilities" by written order, exercise one of the following options with respect to any such terminated item or items of facilities.

(1) If the Contractor has made no binding commitment and incurred no expense therefor of a kind reimbursable hereunder as an actual cost, the Contracting Officer may eliminate the item from this contract and the Government shall be relieved of any liability therefor.

(2) If the Contractor has made a binding commitment and incurred expense therefor of a kind reimbursable hereunder as an actual cost, the Contracting Officer may direct the Contractor to stop all further work and

the making of all further commitments thereon and eliminate the item from this contract. In that event the Contractor and the Contracting Officer will attempt to agree on an amount that will reasonably compensate the Contractor for the actual cost incurred by him with regard to such eliminated item. If no such agreement is reached within thirty (30) days after the date of elimination (or within such longer period as may at any time be mutually agreed upon), the Contractor will be paid an amount, if any, which together with all sums previously paid by the Government on account of the item, shall be sufficient to reimburse the Contractor for expenses paid and the settlement of any obligation incurred by the Contractor thereon. In lieu of reimbursing the Contractor for the settlement of such obligations, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. In no event shall the aggregate of reimbursement on account of the item (and of all payments previously made) together with the amount of any obligations assumed, exceed the actual costs, as herein defined, expended or incurred thereon up to the time of such elimination. The Contracting Officer may permit the Contractor to sell or retain at prices or on terms agreed to by the Government any materials, supplies, or work in process and the proceeds of such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct. Upon payment to the Contractor pursuant to this subparagraph 2, title to all materials, supplies, work in process and other things for which payment is made (except such property as may be sold or retained as above provided) will vest in the Government (if title thereto has not already vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed the Contractor.

(20) Disposition of facilities as set forth below.

Disposition of facilities. Within thirty days after the effective date of a total or partial termination of this contract the Contractor shall account for all facilities with respect to which the Contract is terminated. Within ninety (90) days after the Contractor accounts for such facilities the Contracting Officer shall notify the Contractor as to the disposition of such facilities and the Contractor shall, as directed by the Contracting Officer, prepare, protect, remove, or ship such facilities. Contractor shall be equitably reimbursed for expenses so incurred by an appropriate contractual instrument. If the Contracting Officer fails to notify the Contractor as to disposition of the facilities within the ninety (90) day period, herein provided, the Contractor may, upon reasonable notice to the Government, remove and store elsewhere at Government risk and expense any of the terminated facilities which may be located within the plant of the Contractor. The Government shall have a corresponding right, upon reasonable notice, to remove and place in storage for the account of the Contractor any property, title to which is not in the Government which has not been removed from any Government-owned plant or building provided hereunder at the time of the surrendering of possession thereof.

(21) Continuing plant clearance as set forth below.

Continuing plant clearance. (a) Contractor or shall notify the Contracting Officer whenever it is determined that any property provided hereunder is excess to the requirements of the using Government contracts or is worn out, obsolete, damaged or otherwise unserviceable (whether or not under cir-

cumstances rendering the Contractor liable therefor). Subsequent to receipt of such notice the parties hereto may by mutual agreement effect the disposition of such property without direct reimbursement by the Government for disposition costs (other than transportation costs from the plant wherein said items are located or the point nearest thereto that rail carrier service is available). In the event the parties are unable to agree upon such no-cost disposition the Contracting Officer may effect a partial termination of the contract with respect to such item, may effect other disposition thereof or may elect not to dispose of the items at that time.

(b) The Government may but is not obligated to replace any items disposed of pursuant to the provisions of paragraph (a) hereof.

(c) With the approval of the Contracting Officer, the Contractor may purchase any unserviceable property including scrap to be disposed of pursuant to the terms of this clause upon such terms and conditions as the Contracting Officer may approve. Payments due for any such purchases shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall be paid in such other manner as the Contracting Officer may direct.

(22) Reservation of rights as set forth below.

Reservation of rights. The failure of the Government to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this agreement shall not be construed as a waiver or a relinquishment of the future performance of any such term, covenant or condition, but contractor's obligation with respect to such future performance shall continue in full force and effect.

(23) Davis-Bacon and Copeland Acts as set forth in §§ 411.405-1 and 411.504-1 of this title.

(24) Definitions as set forth in § 406.103-1 of this title.

(25) Assignment of claims as set forth in § 406.103-8 of this title.

(26) Disputes as set forth in § 406.103-12 of this title.

(27) Notice and assistance as set forth in § 408.102 of this title.

(28) Buy American Act as set forth in § 406.103-14 of this title.

(29) Convict labor as set forth in § 411.203 of this title.

(30) Eight-Hour Law as set forth in § 411.303 of this title.

(31) Walsh-Healey Public Contract Act as set forth in § 411.604 of this title.

(32) Nondiscrimination in employment as set forth in § 411.803 of this title.

(33) Officials not to benefit as set forth in § 406.103-19 of this title.

(34) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(35) Patent indemnification of Government by contractor as set forth in § 408.105 of this title.

(36) Reporting of royalties as set forth in § 408.103 of this title.

(37) Notice to Government of labor disputes as set forth in § 406.105-3 of this title.

(38) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in

§§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(39) Gratuities as set forth in § 406.-104-16 of this title.

(40) Examination of records as set forth in § 406.104-15 of this title.

(41) Ceiling prices as set forth in § 406.103-22 of this title.

(42) Approval as set forth in § 406.-105-2 of this title will be used in accordance with instructions contained in subparagraph (2) of § 1006.102 (b)

(43) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b)

SUBPART J—LETTER CONTRACTS

§ 1006.1001 *Scope of subpart.* This subpart sets forth the authorized and required clauses for use in letter contracts.

§ 1006.1002 *Contract clauses for letter contracts contemplating fixed-price definitive contracts.* (a) All letter contracts issued which contemplate issuance of a fixed-price contract will consist of the following clauses in the following sequence:

(1) "An order is hereby placed with you for the furnishing to the Government of the supplies or services set forth in Exhibit 'A' attached hereto and hereby made a part hereof."

(2) "Except as otherwise expressly provided herein, you are directed, upon your acceptance of this order, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date."

(3) "All applicable clauses (other than any termination clause) now required by Federal Law, Executive Order, or applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described are incorporated hereby by reference."

(4) "By your acceptance hereof, you undertake without delay to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all applicable clauses then required by Federal Law, Executive Order and applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be placed with you prior to _____"

(5) "You are not authorized to expend or obligate, in furtherance of your performance hereunder, more than \$_____ in the aggregate. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of your performance hereunder, if for an amount that shall exceed either five per

centum of the amount last above stated or \$25,000.00, whichever is less, for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval of the Contracting Officer. No contract, regardless of the amount thereof, shall be made by you with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein called for, without the written approval of the Contracting Officer as to sources.

(6) Government property as set forth below

Government property. It is anticipated that the definitive contract referred to in paragraph 4 hereof, will contain the provisions of paragraph 13-502 of The Armed Services Procurement Regulation. The provisions of said paragraph shall also be applicable to this letter contract except that references therein to adjustments in pricing and delivery schedule shall be inapplicable and, in lieu thereof, any adjustments in amounts finally payable to the Contractor or time of performance required by the terms of such clause shall be made either at the time of settlement of Contractor's termination claim, or taken into account at the time of execution of the definitive contract contemplated hereby.

Note: Provisions of the reference "paragraph 13-502 of the Armed Services Procurement Regulation" in a foregoing clause are contained in § 412.502 of this title.

(7) Progress payments as set forth below:

Progress payments. After your acceptance hereof, this contract may be amended to include provision for progress payment, and thereafter progress payments, in accordance with regulations from time to time applicable, may be made to you upon your application to the Contracting Officer, Headquarters, Air Materiel Command.

(8) Termination as set forth below:

Termination. (a) In case a definitive contract is not executed by the date specified in paragraph 4 hereof (or any subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate automatically on the stated date or such subsequent date, as the case may be, and a Notice of Termination, effective on the date of automatic termination, shall be delivered to you.

(b) The performance of work under this order may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to you of a Notice of Termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, you shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contract-

ing Officer, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require which approval or ratification shall be final for all purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times and to the extent if any, directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information and other property which, if this order had been completed, would be required to be furnished to the Government; (7) use your best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and, provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon

failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provision of paragraph (d) hereof, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in paragraph 5 hereof. Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount.

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes," incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be under this clause,

such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) Unless otherwise provided in this contract or by applicable statute, the Contractor, from the effective date of termination and for a period of five years after final settlement under this order, shall preserve and make available to the Government, at all reasonable times at the office of the Contractor without direct charge to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

NOTE: Provisions of the reference "Section VIII, Armed Services Procurement Regulation" in a foregoing clause are contained in Part 407 of this title.

(9) "The Contractor's acceptance of this order will be indicated by affixing the Contractor's signature to this letter and two copies thereof and returning the executed original and the copy thereof stamped "Official Copy" to the Contracting Officer not later than _____. Such acceptance will constitute this order a contract on the terms set forth herein."

(10) "Inspection. The Contractor shall provide an acceptable and complete system covering the inspection of all materials, fabrication methods and finished parts. This system shall be approved by the Government representative who shall be assigned at the Contractor's plant."

(11) The provisions of the contract clauses set forth in the following paragraphs of the Armed Services Procurement Regulation are hereby incorporated into this letter contract by reference:

NOTE: Insert appropriate paragraphs of part 408 of this title.

(12) Assignment of claims as set forth in § 406.103-8 of this title. *

§ 1006.1003. *Contract clauses for letter contracts contemplating CPFF definitive contracts.* (a) All letter contracts issued which contemplate issuance of a cost-plus-a-fixed-fee contract will consist of the following clauses in the following sequence:

(1) Provisions as set forth in subparagraph (1) of § 1006.1002 (a)

(2) Provisions as set forth in subparagraph (2) of § 1006.1002 (a)

(3) Provisions as set forth in subparagraph (3) of § 1006-1002 (a)

(4) Provisions as set forth in subparagraph (4) of § 1006.1002 (a)

(5) "You are not authorized to expend or obligate, in furtherance of your performance hereunder, more than \$_____ in the aggregate. Pending the execution of a definitive contract the Contractor shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order hereunder

which is either (a) on a cost-plus-fixed-fee basis or (b) on a fixed-price basis exceeding in dollar amount either \$25,000 or five per centum of the amount authorized to be expended hereunder. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of your performance hereunder, if for an amount that shall exceed the lesser of the amounts specified in (b) above, for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval of the Contracting Officer. No contract, regardless of the amount thereof, shall be made by you with any other party for furnishing any of the completed or substantially completed articles, spare parts or work here-in called for, without the written approval of the Contracting Officer as to sources."

(6) Government property as set forth below:

Government property. It is anticipated that the definitive contract referred to in paragraph 4 hereof, will contain the provisions of paragraph 13-503 of The Armed Services Procurement Regulation. The provisions of said paragraph shall also be applicable to this letter contract except that references therein to adjustments in pricing and delivery schedule shall be inapplicable and, in lieu thereof, any adjustments in amounts finally payable to the Contractor or time of performance required by the terms of such clause shall be made either at the time of settlement of Contractor's termination claim, or taken into account at the time of execution of the definitive contract contemplated hereby.

NOTE: Provisions of the reference "paragraph 13-503 of the Armed Services Procurement Regulation" in the foregoing clause are contained in § 412.503 of this title.

(7) Progress payments as set forth in subparagraph (7) of § 1006.1002 (a)

(8) Termination as set forth in subparagraph (8) of § 1006.1002 (a)

(9) Provisions as set forth in subparagraph (9) of § 1006.1002 (a)

(10) Provisions as set forth in subparagraph (10) of § 1006.1002 (a)

(11) Provisions as set forth in subparagraph (11) of § 1006.1002 (a)

(12) Provisions as set forth in subparagraph (12) of § 1006.1002 (a)

SUBPART K—COST REIMBURSEMENT CONTRACTS

§ 1006.1101 *Scope of subpart.* This subpart sets forth the required and authorized clauses for use in cost reimbursement contracts, where no fee or profit is involved, for research and development with educational or other non-profit institutions.

§ 1006.1102 *Contract clauses.* (a) All cost reimbursement contracts entered into with educational and other non-profit institutions for research and development will consist of the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Inspection as set forth below:

Inspection. The Contracting Officer or any Government personnel designated by him may inspect the work hereunder at all reasonable times.

(3) Reimbursement for costs as set forth below--

Reimbursement for costs. (a) The Government will reimburse the Contractor on submission of public vouchers for its costs and expenses reasonably incurred in the performance of its undertakings hereunder in an amount specified in the Schedule. Such vouchers shall be approved or ratified by the Contracting Officer and shall be supported by such evidence of payment as may be required by the Contracting Officer. The Contractor may submit vouchers at monthly intervals, for costs incurred and not previously reimbursed. The Contracting Officer may withhold all or any part of the final reimbursement payment until receipt of the final report, the property accounting and the patent disclosure and designation required hereunder. All vouchers submitted shall indicate, with respect to each class of items listed by the Contractor thereon, the particular subparagraph of paragraph (b) below under which reimbursement is claimed and shall be itemized and supported by appropriate substantiating documents as required by the Contracting Officer.

(b) For the purpose of determining the amounts payable to the Contractor under this contract, allowable items of cost will be determined by the Contracting Officer in accordance with Part 3 of Section XV of the Armed Services Procurement Regulation, it being understood and agreed without limiting the generality of the foregoing that the following shall be considered as allowable items of cost hereunder when incurred or paid by the Contractor and when necessary and required and used for the performance of the work hereunder:

(1) **Salaries and wages.** Expenditures by the Contractor for the salaries and wages of its personnel and borrowed personnel directly engaged in the performance of the work hereunder and properly allocable thereto including salaries and wages for vacation and sick leave pay of its personnel pursuant to the established practice of the Contractor, plus Federal and State Social Security taxes and paid by Contractor thereon and properly allocable to such salaries and wages: *Provided, however,* That the premium portion of overtime wage payments shall be an allowable item of cost hereunder only if and to the extent that the overtime work for which such payments are made shall have been expressly authorized in writing by the Contracting Officer.

(2) **Materials and services.** Expenditures by the Contractor for such materials, supplies, apparatus, tooling, equipment and other articles (including processing and testing thereof by others and rental of apparatus and equipment from others, properly allocable to performance of the work hereunder, and for the services of others not reimbursed under subparagraph (1), as are necessary for performance of its undertakings hereunder.

(3) **Communication and shipping.** Expenditures by the Contractor necessary for performance of its undertakings hereunder for long distance telephone calls, telegrams, cablegrams, radiograms, postage, freight, express, and drayage.

(4) **Travel.** Expenditures by the Contractor for the transportation of the persons directly engaged in the performance of the work hereunder, and such reasonable actual subsistence expenses in an amount not exceeding \$10.00 per person per day, of such persons incurred during periods of travel or, at the Contractor's option, an allowance, in lieu of actual subsistence expenses of such persons, not exceeding (i) \$8.00 per person for each calendar day or fraction thereof during the period of travel within the continental limits of the United States, and (ii) an amount to be agreed upon between the Contractor and the Contracting Officer per person

for each calendar day or fraction thereof during the period of foreign travel outside the continental limits of the United States: *Provided,* That all such foreign travel shall be limited to persons directly engaged in the performance of the work hereunder and shall be authorized or approved in writing by the Contracting Officer: *Provided further,* That expenses for transportation hereunder by motor vehicle other than common carrier or rented automobile shall be reimbursed on an actual cost basis, or, at the Contractor's option, on a mileage basis at a rate not exceeding seven (7) cents per mile per vehicle, in lieu of the actual expenses of such transportation.

(5) **Subcontracts.** Expenditures by the Contractor representing payments to subcontractors performing any research or development hereunder.

(6) **Government-owned or rented equipment.** Expenditures by the Contractor hereunder for protection and maintenance of Government-owned or of rented equipment.

(7) **Rearrangement or relocation.** Expenditures by the Contractor for rearrangement or relocation of facilities or plant sites or for restoring such facilities or plant sites to substantially the same condition as prior to such rearrangement or relocation: *Provided, however,* That in the event the Contractor elects to retain the benefit of such rearrangement or relocation the Contractor shall return to or credit the Government with the portion of the reimbursement by the Government for its expenditure therefor determined by negotiation between the Contractor and the Contracting Officer to be fair and proper.

(8) Either of the following clauses may be used:

Overhead. Such amounts representing Contractor's overhead costs as are equal to the percentage set forth in the Schedule of the amounts expended for actual and direct salaries and wages of personnel (but exclusive of premium paid for overtime hours worked by direct labor and exclusive of Federal and State Social Security taxes) allowed as items of cost under this clause, it having been determined by the Contracting Officer that, for the purpose of this contract the foregoing computation is reasonable and that amount so computed accurately reflect the overhead cost properly allocable to work performed under this contract; *provided,* however, that such overhead percentage may be redetermined as soon as practicable after the end of the Contractor's fiscal year and as soon as practicable at the end of each such fiscal year thereafter. Such revision of overhead percentages shall be applicable to the period of performance of the contract during the fiscal year in which such redetermination is made or such period as the parties hereto may agree upon. Such rates shall be mutually agreeable to the parties hereto and shall be evidenced by a supplemental agreement to this contract. Any disputes which may arise hereunder shall be subject to the "Disputes" clause of this contract.

Overhead. Such amounts representing Contractor's overhead costs as are equal to the percentage set forth in the Schedule of the amounts expended for actual and direct salaries and wages of personnel (but exclusive of premium pay for overtime hours worked by direct labor and exclusive of Federal and State Social Security taxes) allowed as items of cost under this clause, it having been determined by the Contracting Officer that, for the purpose of this contract so computed accurately reflect the overhead costs properly allocable to work performed under this contract.

(c) Contractor shall exercise due diligence to secure materials and services at the most advantageous prices available, having due regard to quality.

(d) If reimbursement for the cost thereof will be claimed by the Contractor, the Con-

tractor shall obtain the written approval of the Contracting Officer before (i) making any building alteration at a cost of \$500.00 or more, or (ii) entering into any contract or leasing any purchase order for an amount in excess of \$500.00 for acquiring or installing, for the purpose of this contract, capital equipment, for rearranging plant facilities or for doing any construction work, or (iii) procuring the use of apparatus or equipment by lease or other hiring involving a total outlay by the Contractor of \$500.00 or more. For the purpose of this paragraph, it is agreed that capital equipment shall include, but not be limited to, office furniture and fixtures and machine tools and any other items which the Contractor may consider nonexpendable.

(e) As of the date of the execution of this contract there has been allotted for it the sum of _____. This sum may be increased from time to time by the Government solely in its discretion. Upon the making of any such increase the Contracting Officer shall notify the Contractor in writing of the amount of such increase. Notwithstanding any other provisions of this contract, the Contractor shall not be bound to take any action in connection with the performance of this contract that would cause the amount for which the Government will be obligated hereunder to exceed the sum allotted for this contract, and the obligation of the Contractor to proceed with the performance of this contract shall be limited accordingly. If at any time the Contractor has reason to believe that the amount to be expended by it in the next succeeding thirty (30) days when added to all previous expenditures, will exceed seventy-five percent (75%) of the sum allotted for this contract, it shall notify the Contracting Officer to that effect, giving a new estimate of its total expenditures under this contract so that an appropriate increase may be made in the sum allotted for this contract. Anything in this contract to the contrary notwithstanding, the Government shall not be obligated to pay to the Contractor for reimbursement of expenditures or otherwise any amount in excess of the sum allotted for this contract: *Provided, however,* That if the Contractor makes any expenditures for which funds are not allotted, the Contracting Officer may ratify such expenditures when funds are allotted.

NOTE: Provisions of the reference "Part 3 of Section XV of the Armed Services Procurement Regulation" in a foregoing clause are contained in Subpart C, Part 414 of this title.

(4) Assignment prohibited as set forth below:

Assignment prohibited. Neither this contract, nor any interest therein nor any claim arising hereunder, shall be transferred, or assigned by the Contractor to any other person.

(5) Disputes as set forth in § 406.103-12 of this title.

(6) Notice and assistance as set forth in § 408.102 of this title.

(7) Buy American Act as set forth in § 406.103-14 of this title.

(8) Convict labor as set forth in § 411.203 of this title.

(9) Eight-Hour Law as set forth in § 411.303 of this title.

(10) Walsh-Healey Public Contracts Act as set forth in § 411.604 of this title.

(11) Nondiscrimination in employment as set forth in § 411.603 of this title.

(12) Officials not to benefit as set forth in § 406.103-19 of this title.

(13) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(14) Termination as set forth below

Termination. (a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine any such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall exercise all reasonable diligence to accomplish the cancellation of its outstanding commitments hereunder extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. The Contractor agrees to (1) assign to the Government in the manner at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated; and (2) transfer title (to the extent that the title has not already been transferred) and deliver to the Government, as may be directed by the Contracting Officer, (i) any property, work in process, completed work, supplies, and other material, produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government.

(c) The Contractor shall submit its termination claim to the Contracting Officer promptly, after receipt of a Notice of Termination, but in no event later than two years from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such two-year period or authorized extension thereof. The Contractor shall submit its termination claim in the form and with certifications prescribed by the Contracting Officer. Upon failure of the Contractor to submit a termination claim within the time allowed the Contracting Officer shall determine, on the basis of information available to him, the amount, if any due to the Contractor by reason of the termination.

(d) Subject to the provisions of paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole, or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments which it is unable to cancel: *Provided, however,* That in connection with any outstanding commitments which the Contractor is unable to cancel, the Contractor shall exercise reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(e) Any property resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor upon such terms, conditions and prices as may be approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the

Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(f) Any disputes which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(15) Subcontracts as set forth below

Subcontracting. (a) No subcontracts executed hereunder shall provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall not enter into subcontracts involving research or development of the kind contemplated by this contract without obtaining the written approval of the Contracting Officer. The Contractor shall refer each prospective subcontract which might involve such research or development to the Contracting Officer, who shall determine whether or not such research or development is involved.

(b) Without limiting in any way the effect of clause 3 (d) hereof, or the foregoing provisions of this clause, the Contractor shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order hereunder which is either (i) on a cost or cost-plus-a-fixed-fee basis, or (ii) on a fixed-price basis exceeding in dollar amount either \$25,000 or 5 per centum of the total estimated cost of this contract; and no such subcontract or purchase order shall be placed without the prior approval of the Contracting Officer.

(16) Military security requirements as set forth in § 406.104-12 of this title.

(17) Government property as set forth in § 412.503 of this title and subparagraph (20) of § 1006.202 (a)

(18) Accounting records as set forth below

Accounting records. (a) The Contractor agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of the department.

(b) The Contractor shall cause a like provision to be included in all subcontracts hereunder.

(c) The method of accounting used by the Contractor shall be subject to the approval of the Contracting Officer but no material change will be made in the Contractor's method if it conforms to good accounting practice and the costs are readily ascertainable therefrom. The Contractor shall preserve all books, papers and other accounting records pertaining to work under this contract for a period of at least three years after completion or cessation of said work and if the Contractor at any time after such three-year period has expired desires to dispose of said books, papers and accounting records, he shall before doing so, unless applicable statutes otherwise direct, notify and request permission from the Contracting Officer, who shall either authorize their destruction or notify the Contractor to turn them over to the Government.

(19) Insurance as set forth in subparagraph (31) of § 1006.202 (a)

(20) Gratuities as set forth in § 406.104-16 of this title.

(21) Examination of records as set forth in § 406.104-15 of this title.

(22) Ceiling prices as set forth in § 406.103-22 of this title.

(23) The contract clauses as set forth in § 406.104 of this title (not otherwise

mentioned in this part) and Part 408 of this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(24) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions set forth in subparagraph (18) of § 1006.102 (b)

(25) Contractual contents as set forth in subparagraph (19) of § 1006.102 (b)

(26) Approval as set forth in § 406.105-2 of this title will be used in accordance with the instructions contained in subparagraph (20) of § 1006.102 (b)

SUBPART L—TUITION CONTRACTS

§ 1006.1201 *Scope of subpart.* This subpart sets forth the required and authorized clauses for use in contracts for the furnishing of instruction to Government personnel or the dependents of Government personnel.

NOTE: This subpart does not include clauses or the form of contract for the training of pilots or mechanics.

§ 1006.1202 *Contract clauses.* (a) All contracts for the instruction of military personnel of the United States Air Force at civilian colleges and universities will include the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title. The following paragraph will be included in the said clause:

In addition, the following terms and definitions shall govern for the purposes of this contract:

"Course"—A series of lectures and/or instructions and/or laboratory periods relating to one particular field of science or learning.

"Curriculum"—The course as selected by one student for his course of instruction.

(2) Inspection as set forth below

Inspection. The Contractor agrees to permit the Contracting Officer or his duly authorized representative to make inspections of the school facilities and courses offered at any time.

(3) Consideration, payment, and invoices as set forth below

Consideration, payment, and invoices. (a) The Government will pay to the Contractor as compensation, the cost of the course of instruction of each student as set forth in the Order covering his enrollment, which cost will in no event be a greater amount than charged for other students pursuing the same or similar curriculum.

(b) The Government will pay the compensation stated in paragraph (a) above, in advance as authorized by -----, as follows:

(1) For the first semester in which the student is enrolled, upon the receipt from the Contracting Officer of approval copy of Order as provided in clause 12 hereof, the Contractor will submit to the Contracting Officer a voucher, attaching the Order or Orders covered thereby, in quintuplicate for preaudit and forwarding through channels to the Finance Officer indicated on the cover page of this contract. Vouchers shall have the following certificate placed thereon and shall be signed by such representative or

representatives of the Contractor as shall be authorized by the Contractor:

"I certify that the above bill is correct and just; that payment therefor has not been received."

(2) As to subsequent semesters, the Contractor will submit invoices as provided in (1) above, after the student has been enrolled for that semester.

(c) Payment on any such invoice will be deemed to be in complete discharge of the Government's obligation under this contract relative to the student(s) named thereon, to the extent of the semester or period of instruction covered by such invoice.

(4) Disputes as set forth in § 406.103-12 of this title.

(5) Convict Labor Law as set forth in § 411.203 of this title.

(6) Eight-Hour Law as set forth in § 411.303 of this title.

(7) Nondiscrimination in employment as set forth in § 411.803 of this title.

(8) Officials not to benefit as set forth in § 406.103-19 of this title.

(9) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(10) Termination as set forth below:

Termination. (a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever, (i) the Contracting Officer shall determine that any such termination is for the best interests of the Government, or (ii) the student voluntarily, or at the request of the Contractor withdraws from any course or courses. Whenever termination is effected pursuant to (i) above, the Contracting Officer shall deliver to the Contractor a Notice of Termination specifying the extent to which performance of work under this contract shall be terminated and the effective date of such termination. Whenever termination is effected under (ii) above, the student after receiving approval of the Commanding General, Air University shall notify the Contractor and the Contracting Officer of the effective date of his withdrawal and upon receipt by the Contractor of any such notice, it shall unless the Contracting Officer directs otherwise, discontinue all the work and activity specified by such notice at the time set forth therein.

(b) In the event of termination in whole or in part, the Contractor shall be paid (i) all fees then due and owing and theretofore unpaid, and (ii) all accrued fees, in accordance with the established policies of the Contractor if termination is effected during any period of instruction.

(11) Termination in the event of revised prices as set forth below:

Termination in the event of revised prices. The consideration as set forth in each Order issued hereunder is based on the Contractor's standard fees on the date of such Order. The Contractor shall have the right to change any or all fees for any succeeding semester after the first semester or period of instruction upon written notice to the Government thirty (30) days prior to the commencement of such semester, but in no event to a greater amount than that charged for other students pursuing the same or similar course of instruction. In the event of such notice, the Government shall have the option to accept or refuse the revised fee basis. If the Government elects to refuse the revised fee basis, it may proceed to terminate the contract under the terms of clause 10 hereof.

(12) Orders for instruction as set forth below:

Orders for instruction. (a) Requests by the Government for instruction shall be made by delivery to the Contractor of an Order to this contract.

(b) Such Order shall cover one (1) student each; shall be presented in sextuplicate to the Contractor by such student at the time of matriculation; shall be completed by the Contractor (who may retain (1) copy for his file) to show the curriculum of the student and the cost thereof, and shall be forwarded in quintuplicate to the Contracting Officer for approval. Upon approval by the Contracting Officer, each Order shall be given an appropriate number, and a copy thereof, executed by the Contracting Officer, shall be returned to the Contractor.

(c) All students accepted by the Contractor shall be registered in the same manner as civilian students and shall be subject to the same academic regulations, and shall have the same privileges, including use of all facilities and equipment normally furnished by the Contractor to all students.

(d) In the event it is desired to amend an Order issued hereunder for any reason, an amended Order will be initiated by the Government and forwarded to the Contractor for completion and signature, who shall then process the same in the same manner as an original. Such amended Order shall bear the same number as the original Order in addition to the appropriate amendment number.

(13) Textbooks, equipment, and supplies as set forth below:

Textbooks, equipment, and supplies. Unless otherwise provided herein, all necessary textbooks, laboratory manuals, and other equipment which will be required for use by individual students will be procured by said students at their own expense.

(14) Student supervision as set forth below:

Student supervision. The Contracting Officer may vary the curriculum as selected by the student but shall not require nor make any change in any course as offered by the Contractor without the Contractor's consent.

(15) Reports as set forth below:

Reports. The Contractor shall submit to the Contracting Officer at the end of each term or semester and at such other times as the Contracting Officer may direct, a written report containing the progress and grades of each student and such other information as the Contracting Officer may require.

(16) Gratuities as set forth in § 406.104-16 of this title.

(17) Examination of records as set forth in § 406.104-15 of this title.

(18) Ceiling prices as set forth in § 406.103-22 of this title.

(19) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b).

(20) Contractual contents in accordance with instructions contained in subparagraph (19) of § 1006.102 (b).

(21) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b).

§ 1006.1203 *Base residents.* (a) All contracts for the tuition of dependents of military and civilian personnel residing at the Department of the Air Force bases or installations will include the following clauses in the following sequence:

(1) Definitions as set forth in § 406.103-1 of this title.

(2) Inspection as set forth in subparagraph (2) of § 1006.1202 (a).

(3) Consideration, payment, and invoices as set forth below:

Consideration, payment, and invoices. (a) The amount to be paid by the Government for services rendered hereunder shall be on a per-pupil basis as set forth hereinbelow and in accordance with the Enrollment Schedule attached hereto.

(b) Air Force Regulation 34-10, dated 9 June 1948, authorizes per-pupil payments up to, but not in excess of an amount equal to that of the full gross operating cost per pupil minus any and all grants, contributions, or credit received from local, county, State and/or Federal sources other than furnished under this authority, which are applicable to the eligible dependents enrolled in the School District, divided by the average daily membership attendance.

(c) The Contractor shall be paid at the end of each semester upon rendition of properly certified invoices or vouchers, at the rate stipulated herein for each pupil enrolled, less deductions, if any.

(d) *Invoices and certifications.* Invoices shall be submitted in quadruplicate, the original of which shall be signed by such representative or representatives of the Contractor as shall be authorized by the Contractor, and which shall contain thereon the following certificate:

"I certify that the charges stated herein are correct and just and that payment therefor has not been received."

Invoices shall be mailed to the attention of the office designated elsewhere herein for forwarding to the Finance Officer designated to make payment hereunder.

(e) Payment hereunder shall not be made in advance of services rendered.

(f) *Payment for fractional part of month.* Enrollment or attendance for any fractional part of a month shall be regarded as attendance for a full month, unless the annual school year session is terminated before the end of a full month.

(g) *Additional enrollments or withdrawals.* Payment covering enrollment of additional pupil(s), or withdrawal of enrolled pupil(s), during any part of the annual school year session shall be made and prorated on the basis of the period of services rendered, and at the rate and under the terms and conditions herein set forth.

(4) Disputes as set forth in § 406.103-12 of this title.

(5) Convict labor as set forth in § 411.203 of this title.

(6) Eight-Hour Law as set forth in § 411.303 of this title.

(7) Nondiscrimination in employment as set forth in § 411.803 of this title.

(8) Officials not to benefit as set forth in § 406.103-19 of this title.

(9) Covenant against contingent fees as set forth in § 406.103-20 of this title.

(10) Termination for the convenience of the Government as set forth below:

Termination. This contract shall be binding until date of expiration, unless sooner terminated in whole or in part by the Contracting Officer giving notice of such termination to the Contractor in writing 30 days prior to the date the contract will be so terminated. The Government shall be liable for payment only for services rendered prior to the date of termination but shall not be liable for damages or losses suffered by the Contractor on account of such termination.

(11) Gratuities as set forth in § 406.104-16 of this title.

(12) Examination of records as set forth in § 406.104-15 of this title.

(13) Ceiling prices as set forth in § 406.103-22 of this title.

(14) The contract clauses as set forth in § 406.104 of this title (not otherwise mentioned in this part) and Part 403 of

this title will be used in accordance with instructions contained in said section and part. The clauses set forth in §§ 406.105-5, 406.105-7 and 408.106 of this title will be used where necessary or desirable to cover the subject matter contained in such clauses.

(15) Alterations as set forth in § 406.105-1 of this title will be used in accordance with instructions contained in subparagraph (18) of § 1006.102 (b)

(16) Contractual contents in accordance with instructions set forth in subparagraph (19) of § 1006.102 (b) of this part.

(17) Approval as set forth in § 406.105-2 of this title will be used in accordance with instructions contained in subparagraph (20) of § 1006.102 (b)

SUBPART M—SPECIAL CLAUSES

§ 1006.1301 *Scope of subpart.* This subpart sets forth clauses authorized for use in connection with those prescribed herebefore. Circumstances for and limitations upon their use are also set forth in this subpart.

§ 1006.1302 *Furnishing of materials and supplies by the Government.* The following clause may be inserted in the contracts set forth in §§ 1006.102 and 1006.104.

Furnishing of materials and supplies by the Government—(a) Government's option. The Contracting Officer may at his option from time to time furnish the Contractor with materials and/or supplies not readily obtainable in the open market and which are required by the Contractor for the performance of this contract. In such event, an equitable adjustment in the contract price shall be made as provided in clause 2 hereof.

(b) *Delivery and disposition thereof.* In the event materials, supplies, equipment or other property are furnished by the Government to the Contractor under this contract, except such materials and/or supplies furnished under the terms of this clause, for installation in the products and materials or other items called for hereunder, or for use in connection with the performance of this contract, said Government property shall be delivered to the Contractor f. o. b. cars or carrier's equipment at the plant or plants of Contractor, or the point or points nearest thereto that rail carrier service is available, and any of such materials, supplies, equipment or other property not permanently installed in the products and materials or other items called for hereunder, or properly expended by the Contractor in the performance of this contract, shall unless otherwise provided herein, be delivered by the Contractor to the Government f. o. b. cars or carrier's equipment at Contractor's plant or at the point of points nearest thereto at which the shipment can be delivered into carrier's possession, packed for domestic shipment.

§ 1006.1303 *Guaranty.* When deemed necessary to the benefit of the Government, the following clause may be used in lieu of the clause entitled "Guaranty" in §§ 1006.202 and 1006.204.

Guaranty. (a) The Contractor guarantees that the services hereunder will conform to the highest professional standards in the field, and that at the time of delivery thereof to the Government, the articles provided for in this contract will conform to the requirements of this contract, and will be free from any defects in material and workmanship; subject, however, to the following paragraph (b).

(b) The final acceptance of the supplies or work by the Government shall be conclusive except as regards (A) fraud or such gross mistakes as amount to fraud, or (B) any defects or failure to conform to contract requirements as to which the Government has notified the Contractor within six (6) months after the date of said acceptance.

(c) The Contractor shall, whenever discovered by the Government and requested, remedy defects or failures to conform to contract requirements by correction or replacement, at no cost whatsoever to the Government, when said defects or failures are determined to have been occasioned by the reasons set forth in (A) of paragraph (b) preceding.

(d) Subject to the time limitation set forth in paragraph (b) hereof, the Contractor shall remedy defects or failures to conform to contract requirements by correction or replacement, when due to causes other than those enumerated in (A) of paragraph (b) hereof, and for performance thereof the Contractor shall be entitled to be reimbursed its costs in accordance with the clause hereof entitled "Reimbursement," but no additional fee shall be payable in connection therewith.

(e) The foregoing provisions shall be equally applicable to any work performed hereunder.

NOTE: When the foregoing clause is used, the following revisions are to be made in the clause entitled "Inspection":

(a) The last sentence of paragraph (c) should be deleted.

(b) Paragraph (e) should be deleted in its entirety.

§ 1006.1304 *Superseding specifications.* Any contract which requires that the Contractor comply with a Government specification may contain the following clause:

Superseding specifications. All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

§ 1006.1305 *Delay in delivery of data.* Any fixed-price supplies contract which calls for the delivery of end items and also for technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end item, may, if desired, include the following clause:

It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data is not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default," withhold payment to the Contractor for any of the supplies theretofore delivered to the Government, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of this contract for default to the extent and in the manner

authorized by said clause, and may take any or all of the foregoing actions separately or in combination.

§ 1006.1306 *First article approval.* Any fixed-price supplies contract, under which it is desired to require the Contractor to furnish first articles for inspection and to refrain from producing additional articles until the first article has been approved, may include the following clause:

Prior to production of the remainder of the articles called for under Item _____, hereof, Contractor shall deliver, all transportation costs prepaid, the first article called for in said Item to the address listed below for inspection and approval. The said first article shall be delivered in accordance with the delivery schedule set forth herein. Said first article shall comply with the requirements set forth in said Item and shall be subject to acceptance by the Government in accordance with said requirements. Pending acceptance of said first article, the remaining like articles called for shall not be fabricated and/or produced. If inspection reveals discrepancies which require change in specifications, such changes will be processed in accordance with the clause hereof entitled "Changes." The first article shall be delivered to the destination set forth in the Schedule.

§ 1006.1307 *Production sample tests.* Any fixed-price supplies contract, under which it is desired to provide for production sample tests, may include the following clause:

Production sample tests. At the election of the Contracting Officer, whenever he deems it necessary in order to insure that the levels of quality and performance are being maintained in accordance with established standards, he may require the Contractor to submit production samples of the articles being produced hereunder. Production sample tests shall be performed at the Contractor's plant or at such other place as the Contracting Officer may designate. Contractor shall furnish, on request by the Contracting Officer, such personnel and facilities as may be required to conduct such tests. The Government shall not be liable for loss or destruction of, or damage to samples occurring during or incident to tests. At the conclusion of tests, samples shall, if requested by the Contractor, be returned to the Contractor in their then condition and said samples may thereafter be submitted by the Contractor as contract items providing all worn, broken or defective parts and finishes are repaired or replaced by the Contractor. If production sample tests are to be performed at an Air Force base, transportation charges to and from such base shall be prepaid by Contractor and samples shall be plainly marked "Production Samples, Contract No. (insert number of this contract)."

§ 1006.1308 *First article inspection.* Any fixed-price supplies contract, under which it is desired to obtain submission of first articles for inspection, but that the Contractor continue production of remaining articles pending approval, may contain the following clause:

In accordance with the delivery schedule set forth herein the Contractor shall submit the first article of Item _____ hereof to the Government for inspection from the first production of the equipment to be delivered under the terms of the contract to the (insert address of consignee). "For First Article Inspection and Acceptance" The Contractor may continue to produce the balance of the articles to be delivered under the terms of the contract while the first ar-

title is undergoing inspection and tests. The Contractor shall be notified in writing by the Contracting Officer of the results of the tests on the first article. If the first article is accepted, production shall continue without delay. If the first article is rejected, the Contractor shall make the necessary changes, as recommended by the Contracting Officer to bring the equipment within specification limits, at no additional cost to the Government and with a minimum delay in production. The correction shall be made on all production items prior to presentation to the Government inspector for inspection and acceptance. Production of the articles to be delivered under the terms of the contract may continue while the sample parts and data to be submitted for test and approval under the applicable specification are being tested. The Contractor shall replace any rejected parts with approved parts before presentation of the completed items to the Government inspector for inspection and acceptance.

§ 1006.1309 Progress payments (75 percent) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 75 percent of the cost of the property, may include the following clause:

Progress payments. Progress payments, which are hereby defined as payments prior to acceptance, on work in progress for the Government under this contract, may be made upon the following terms and conditions:

(a) The Contracting Officer may, from time to time, authorize progress payments to the Contractor upon property acquired or produced and service performed by it for the performance of this contract; provided, that such progress payments shall not exceed 75 percent of the cost to the Contractor of the property and services upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer as being representative of the value of the work already performed, provided further, that in no event shall the total of unliquidated progress payments (see (d) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the total contract price of supplies or services still to be delivered.

(b) Upon the making of any progress payment under this contract, title to all parts, materials, inventories, work in process and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production; provided, that nothing herein shall deprive the Contractor of any further progress or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) The Contractor represents and warrants that the property, upon which any progress payment is made hereunder, shall be cleared of all liens and encumbrances of any kind whatsoever upon receipt of any progress payment.

(d) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the progress payments theretofore made to the Contractor, under the authority herein contained.

(e) It is recognized that property (including, without limitation completed supplies,

spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this clause will from time to time be used by or be put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of Notice of Termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer: *Provided*, That after receipt of Notice of Termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of progress payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (e), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all progress payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor.

(f) The provisions of this contract referring to "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this clause. The provisions of this clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

(g) If this contract (as heretofore or hereafter supplemented or amended) contains provision for advance payments, and in addition if at the time any progress payment is to be made to the Contractor under the provisions of this progress payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such progress payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments clause, and shall thereafter be withdrawn only pursuant to such provisions.

§ 1006.1310 Progress payments (90 percent) Any fixed-price supply or service contract, under which it is desired to make progress payments in an amount not to exceed 90 percent of direct labor and material costs to the contractor of the property, may include the clause set forth in § 1006.1309, except that in paragraph (a) of such section, the words "75 percent of the cost" shall

be replaced by the words "90 percent of the direct labor and direct material costs."

§ 1006.1311 Spare parts provisioning. Any fixed-price supply contract under which it is desired to provide for the furnishing of spare parts for such supplies, and not under a spare parts provisioning appendix, may include the following clause:

Spare parts. (a) The spare parts called for in Item ----- hereof shall be selected from a list of spare parts to be prepared by the Contractor and furnished in triplicate to the Contracting Officer at the base at which this contract was written, within ----- days after award. Said list shall enumerate all parts comprising the item called for in Item ----- hereof, shall state the quantity per end item, and the parts shall be identified by the original manufacturer's part number and complete nomenclature. Part numbers of the manufacturer of the end item or of a manufacturer who performs only assembly shall not be shown. Such list shall include Contractor's proposed unit prices, and the quantities and unit prices shall be subject to revision by negotiation as hereinafter provided. Said list shall be prepared in accordance with Army-Navy Specification AN-L-15 (see Note 1).

(b) At the time of submission of such list, Contractor shall advise the Contracting Officer when the material hereinafter in this paragraph mentioned will be available. Contractor will make available at his plant two of the units called for in Item ----- hereof, one of which shall be completely assembled and in operating condition and the other of which shall be completely disassembled. All parts of the disassembled unit will be tagged so as to show vendor's or original manufacturer's part number and nomenclature. Drawings, blueprints, and photographs sufficient to show in detail the location of each part of the end item will likewise be provided. At such time as the activity responsible for determining spare parts requirements shall fix, and upon notice to Contractor, a provisioning team will visit the Contractor's plant and examine the units, assembled and disassembled, mentioned in this paragraph, and will then and there make preliminary selection of the spare parts to be furnished hereunder. Such selection shall be communicated to the Contracting Officer by the provisioning team.

(c) Contracting Officer shall designate the spare parts required and shall advise Contractor with respect thereto as well as with respect to the method of packaging and preservation to be employed, and the Contractor and the Contracting Officer shall thereupon negotiate prices for the spare parts so designated and the list of spare parts and prices agreed upon shall be made a part of this contract by attachment thereto as an exhibit. In the event the total price of spare parts shall be more or less than the price stipulated in Item ----- hereof the total price of this contract shall be modified accordingly by appropriate amendment.

(d) Whenever a design change is made in the articles described in Item ----- the Contractor will forthwith prepare a statement showing by item and part number the changes which in the opinion of the Contractor should be made in the spare parts list and shall forward six (6) copies thereof to the Contracting Officer. Included in such list shall be a statement as to the effect of the design change on interchangeability of the spare parts affected by the change, the effective point at which the change is to be made, and Contractor's recommendation as to part numbers and quantities which the Contractor recommends for procurement. Thereupon changes shall be made in the spare parts exhibit, quantities, items and prices as

may be necessary in order to conform to the design change.

(e) (See Note 2). Contractor agrees that he will for a period of ten (10) years from the date of this contract or for the useful life of the end item, whichever is the lesser, furnish additional spare parts at such prices as shall hereafter be negotiated.

NOTE-1. The last sentence of paragraph (a) should be omitted if inapplicable. Paragraph (b) is designed for cases where the "Provisioning Team" procedure is employed. If not so employed, paragraph (b) should be omitted and the remaining paragraphs renumbered.

NOTE 2: Paragraph (e) should be deleted if inapplicable.

§ 1006.1312 *Advance payments.* Any fixed-price supplies contract under which making of advance payments has been authorized in accordance with the requirements of Armed Services Procurement Regulation and these procedures may include the following clause:

Advance payments. (a) The Government shall, from time to time at the request of the Contractor, and subject to approval by the Contracting Officer as to the need therefor, make advance payments to the Contractor. The aggregate of such advance payments shall not exceed the sum of \$----- or ----- percent of the contract price, as it may be amended, whichever shall be the smaller.

(b) All advance payments and, unless otherwise directed in writing by the Contracting Officer, all other payments under this contract shall be made by check payable to the Contractor and marked for deposit in a special bank account with such bank or banks as may be selected by the Contractor and approved by the Contracting Officer. Before any advance payment is made, the Contractor shall transmit to the Contracting Officer an agreement in duplicate, satisfactory to the Contracting Officer, with each bank in which any special bank account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. No part of the funds in the special bank account, prior to withdrawal thereof from such account as hereinafter provided, shall be mingled with other funds of the Contractor. Each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer. The funds in the special bank account shall be withdrawn and used solely for the purposes of making payments for direct materials, direct labor and overhead expenses, required in the performance of this contract and properly allocable thereto in accordance with generally accepted accounting principles, and for such other purposes as the Contracting Officer may approve in writing.

(c) On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of ----- percent per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor; credits arising from deductions from payments to the Contractor under this contract shall be made as of the dates of issue of the check for such payments; and credits arising from cash repayments to the Government by the Contractor shall be made as of the dates the checks therefor are received by the Finance Officer. As soon as such monthly computations shall have been made, the interest so determined shall be deducted from the payments otherwise due to Contractor under this contract.

(d) Liquidation of the principal of any advance payment made to the Contractor hereunder shall be made by deductions of ----- percent from any and all payments made by the Government under the terms of this contract; provided, that if at any time the unliquidated balance of the principal of advance payments made exceeds ----- percent of the balance of the total contract price then unpaid, the amount of such excess shall upon demand of the Contracting Officer be promptly returned to the Government by withdrawal from the special bank account or otherwise, and if not so returned, shall be deducted from any and all payments to be made by the Government under the contract. The Contractor may at any time repay to the Government all or any part of the funds advanced hereunder and shall at any time, upon demand by the Contracting Officer, repay such part of the unliquidated balance of advance payments as shall in the opinion of the Contracting Officer be in excess of the amount necessary for the current needs of the Contractor. If, upon completion of the contract or upon its termination for other than the fault of the Contractor, the advance payments and interest thereon, if any, have not been fully liquidated, the unliquidated balance thereof shall be deducted from any payments otherwise due the Contractor, and if such deductions are insufficient to cover such balance, the deficiency shall be paid by the Contractor forthwith after demand. In the event of termination of this contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment and interest thereon, if any. If the Contractor institutes or has instituted against it any bankruptcy, reorganization, receivership, or insolvency proceedings, or makes or enters into any assignment for the benefit of, or arrangement or composition with, its creditors, the Contracting Officer without limiting any rights which the Government may otherwise have, may upon written notice to the Contractor (i) withhold further withdrawals from the special bank account, (ii) withdraw all or any part of the balance in the special bank account by check signed solely by the Contracting Officer, and (iii) demand immediate repayment of the unliquidated balance of advance payments hereunder. If the demand made in any event set forth in this subparagraph is not met within 15 days of receipt thereof, the amount demanded will bear interest at the rate of 6 percent rather than at the rate, if any, specified elsewhere in this clause, from the date of receipt of the demand until payment is made.

(e) Pursuant to the provisions of section 5 of the Armed Services Procurement Act of 1947, any and all advance payments made under this contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for by this contract, upon the credit balance in any special bank account, and upon all the material and other property acquired for or allocated to the performance of the contract except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have title to such supplies, material or other property. The Contractor, to the extent determined necessary and practicable by the Contracting Officer, shall identify by marking or segregating all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. The Contractor shall maintain adequate accounting control over such property on its books and records. If such supplies, ma-

terials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest hereunder on any mass of property with which such supplies, materials, or other property is intermingled. When all advance payments made under this contract, together with interest thereon, if any, have been liquidated, any funds remaining in the special bank account shall, upon notice in writing to the depository bank by the Contracting Officer, be free and clear of any lien hereunder and may be withdrawn by the Contractor without countersignature or other restrictions hereunder.

(f) The Contractor shall furnish to the Contracting Officer (i) balance sheets and profit and loss statements quarterly, or at such other intervals as the Contracting Officer may require, (ii) monthly reports on the operation of the special bank account, and (iii) such other financial information concerning the operation of the Contractor's business as may be requested. The Contractor shall at all times afford to the Contracting Officer proper facilities for inspection and audit of the Contractor's financial records and accounts.

§ 1006.1313 *Employment of aliens.* To permit the contract clause set forth in § 406.104-3 of this title to be embodied in the printed text of standard contract forms, the following words may be inserted preceding the language set forth in § 406.104-3: "If this contract calls for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories * * *"

§ 1006.1314 *Prior instruments superseded.* Those definitive contracts which operate to replace a preceding award or letter contract or other similar instrument will contain the following clause:

This is the definitive contract contemplated by (letter contract) (not of award) dated ----- and designated Contract No. -----, and supersedes, said (letter contract) (Notice of award).

§ 1006.1315 *Bailment contemplated.* Any contracts under which it is contemplated that the Government will, by means of a separate bailment contract, furnish items to the Contractor for use in connection with performance of the contract, may contain the following clause:

It is contemplated by the parties hereto that the Government will loan, in addition to any other property listed in this contract as to be "furnished" by the Government, to the Contractor (items to be enumerated) for use in connection with the performance of this contract, and that an appropriate written agreement of bailment will be entered into by and between the parties hereto for that purpose. In the event of delay or failure of the Government to loan such property, as aforesaid, the provisions of the clause of this contract entitled "Government-Furnished Property" or "Government Property" relating to failure or delay in the furnishing of property, shall be applicable.

§ 1006.1316 *Special delivery provisions.* Any fixed-price contract for research, of such highly experimental character that the contractor's ability to perform within a stated period of time is in doubt, may, with the approval of the commanding general of the command involved, include the following clause:

Special provision relating to delivery. (a) If the Contractor, despite reasonable diligence, will be unable to complete the work

called for under this contract by the date of delivery specified in the Schedule, it may give the Contracting Officer written notice of the anticipated default in delivery; provided such notice is given not less than thirty (30) days before the date of delivery specified in said Schedule or at such time as the Contracting Officer deems sufficient. If such notice is duly given, then the Contracting Officer may in his discretion extend the date of delivery specified in said Schedule for such period as he deems advisable, and modify this contract in writing accordingly.

(b) The Government agrees that, so long as the Contractor acts with reasonable diligence in the performance of the work called for hereby, it will terminate performance under this contract only pursuant to the clause hereof entitled "Termination for Convenience of the Government" and not under the clause hereof entitled "Default."

§ 1006.1317 Facilities contemplated. If it has been agreed that the contractor, for the performance of a particular supply contract, requires the use of certain facilities which are to be furnished to him under the provisions of a separate facilities contract, a clause shall be incorporated in the supply contract covering the following subject matter in as detailed a manner as practicable:

a. What facilities will be furnished (including the maximum value thereof where a fixed-price supply contract is involved, and the estimated cost thereof where a cost-plus-fixed-fee supply contract or a fixed-price supply contract with price redetermination is involved);

b. When such facilities will be furnished;

c. The effect of delay of receipt of the facilities; and

d. The effect of nonreceipt or withdrawal of the facilities. In addition, the clause will specifically authorize the use of said facilities, and will set forth the fact that the use is on a rent-free basis, or the rental to be paid for said use.

§ 1006.1318 Transportation charges. Any fixed-price supply contract, under which the Contractor has quoted a price including the transportation charges, and it is desired to provide for the possibility of shipment on Government bill of lading, may include the following clause:

The Contractor hereby agrees that in the event that shipments hereunder are made on Government bill of lading, there shall be deducted from the contract price the commercial freight charge for delivery to the destination specified herein, including any Federal, State, or local tax directly applicable thereto. The Contractor further agrees to show any such reductions on the invoices submitted hereunder.

§ 1006.1319 Flight risks. Any supplies contract under which the Contractor is required to operate aircraft, and whereunder, the contract pricing does not include any amount for flight risk insurance premiums, may include a clause whereby the Government assumes the risk of loss of aircraft during their operation by approved Contractor personnel.

§ 1006.1320 Increase option. Any fixed-price supply contract, under which it is desired to furnish an option on the part of the Government to increase the quantity called for, may include the following clause:

Option for increased quantity. The Contractor grants to the Government the right,

at any time during the life of the contract, to increase the quantity or quantities of the supplies called for herein, at not more than the unit price stated by an amount not exceeding 50 percent of the entire contract price. Said increase may be applied to all or any item or items at the option of the Contracting Officer. The exercise of such options shall be evidenced by supplemental agreement or amendment hereto.

§ 1006.1321 Special overtime provisions. The following clause is authorized for use in any fixed-price contract which contains a price redetermination provision, and the use of such clause is recommended although not required:

Overtime. The Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, unless approval is obtained. Request for such approval will be made to the office having administrative responsibility as designated elsewhere in this contract. In the event of failure to obtain such approval, premium compensation payments will not be recognized in making any price adjustment under any provisions of this contract pertaining to adjustment of price.

§ 1006.1322 Special inspection provisions. In fixed-price supply contracts for the production of experimental airplanes, the provision of (e) under subparagraph (14) of § 1006.102 (b) may be deleted and the following substituted:

The Contractor shall, in the manufacture of the articles to be supplied under this contract, be required to use such jigs, fixtures, and/or other devices and appliances in all processes which are suitable for the fabrication of experimental-type airplanes and pertinent spares. Such jigs, fixtures and/or other devices and appliances may be of temporary-type construction, but shall be adequate to maintain the dimensions of the airplanes as called for in the applicable drawings.

§ 1006.1323 Discount. Any fixed-price supply contract, under which the contractor has quoted a price subject to discount for prompt payment, may contain the following clause:

Cash discount. The Contractor shall allow the Government a cash discount of _____ percent, provided payment is made within _____ days.

§ 1006.1324 Construction guaranty. Any construction contract (see Subpart F of this part) may, if desired, contain the following clause:

Without limiting any other right of the Government or obligation of the Contractor under this contract, but in addition thereto if within one (1) year from and after date of final inspection and acceptance, any part or parts of the material to be furnished under this contract fail due to defective material or workmanship or reveal that they did not, at the time of final acceptance and inspection, conform to the specifications and contract, the Contractor shall, at its own expense, correct the defect or defects.

§ 1006.1325 Fixed overhead rates. All cost-plus-a-fixed-fee (see Subpart B of this part) or cost reimbursement (see Subpart K of this part) type contracts, under which it is desired to use fixed overhead rates in lieu of actual rates, may include the following clause:

Fixed overhead rates. It has been determined by the Contracting Officer, in advance, and agreed to by the contracting parties for the purpose of simplifying auditing proce-

dures applicable hereto, that the amounts set forth in the Schedule represent a reasonable and proper proportionate share of all of Contractor's overhead applicable and allocable to the performance of this contract, and as excluding any expenditures or items of cost for which direct reimbursement is provided elsewhere in this contract. Unless the prior approval of the Contracting Officer is obtained, the Contractor shall not change its method of accounting under this contract in such manner as to account for any item of cost on a direct-cost basis if such item of cost was considered as an indirect charge for the purpose of establishing the overhead rates set forth in the Schedule.

§ 1006.1326 Redetermination of overhead rate. Normally, when the clause set forth in this section is used the following clause will be used:

Redetermination of overhead rate. (a) The overhead rates set forth in the Schedule may be increased or decreased in accordance with this clause.

(b) **Overhead periods:** The Government and the Contractor agree to revise the fixed overhead rate under this contract periodically in accordance with this clause and agree that the performance of this contract will be divided into successive periods of the number of months each, set forth in the Schedule after the first period, for that purpose. The first period will extend from the date set forth in the Schedule. The first day of the second period, and each subsequent period, is hereinafter referred to as the "effective date of the overhead rate revision." Within sixty (60) days after the end of the first period hereunder and after the end of each subsequent period, or at such later time or times as the Contracting Officer may fix, the Contractor shall furnish the statements and data referred to in paragraph (c) of this clause.

(c) **Submission of data:** At the time or each of the times specified or provided for in paragraph (b) of this clause, the Contractor shall submit (i) a new estimate and breakdown of the overhead rate proposed for the succeeding period under this contract; (ii) an explanation of the differences between the original (or last preceding) overhead rates and the new estimate; (iii) such relevant data, cost records, reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced overhead costs hereunder to the extent that they are obtainable at the time or times of the negotiation of the revision of the overhead rates; (v) any other relevant data usually furnished in the case of negotiation of an overhead rate to the extent available. The Government may make such examination of the Contractor's records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) Upon the filing of the statements and data required by paragraph (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon the overhead rate to be applicable on and after the effective date of the overhead rate revision. Each such revision of the overhead rates shall be fair and reasonable in the circumstances and shall be evidenced by a supplemental agreement hereto.

(e) **Disagreements:** If within ninety (90) days after the effective date of the overhead rate revision (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a revised overhead rate for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause hereof entitled "Disputes."

(f) **Payments:** Until a new overhead rate shall become effective in accordance with

this clause, the overhead rate in force immediately prior to the effective date of the overhead rate revision shall be applicable, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (g) (2) (B) of this clause.

(g) Termination provisions: For any of the purposes of the clause hereof entitled "Termination for Convenience of the Government," the fixed overhead rate or allowance shall be deemed to be:

(1) For expenditures made prior to the effective date of the overhead rate revision, the fixed overhead rate (giving effect to any prior revisions under this clause) applicable to such expenditures;

(2) For all expenditures made on or after the effective date of the overhead rate revision;

(A) The overhead rate as revised in accordance with this clause if such revision shall have been agreed upon; and

(B) If such revision shall not have been agreed upon, then such overhead rate as the Contractor and the Contracting Officer may agree upon as reasonable under all the circumstances, and in the absence of such agreement such reasonable overhead rate as may be determined in accordance with the clause hereof entitled "Disputes."

(h) The Contractor shall not be paid any overhead for work performed on any sites (divisions, departments, burden centers, etc.), other than those for which fixed overhead rates have been specifically set forth herein, without the approval of the Contracting Officer. After such approval the parties agree to promptly negotiate such additional fixed overhead rates as may be required; and such additional rates shall be evidenced by a supplemental agreement hereto (which may be the supplemental agreement establishing revised rates hereunder), and shall thereafter be subject to the provisions hereinabove set forth.

(i) In the event that an accelerated Government program involving either new procurement or the acceleration of delivery or performance schedules on existing procurements becomes effective as to the Contractor during any of the overhead rate periods, the overhead rates established for such period shall be subject to review and revision by negotiation upon written demand made by either party. Any increase or decrease in the overhead rates established as a result of such review and revision shall be set forth in an amendment to this contract.

§ 1006.1327 Price escalation for standard steel items (1) The following contract clause is authorized for use in formally advertised fixed-price contracts for furnishing standard steel items:

Price escalation for standard steel items.

(a) The Contractor hereby warrants that the unit prices stated herein on the date set for opening of bids are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, after the date set for opening of bids and during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increase in any

unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price and no increase shall be granted unless the Contractor's applicable established price has increased subsequent to the date set for opening of bids.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer he shall so notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's said request and the contract shall be modified accordingly. *Provided*, That such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

§ 1006.1328 Price escalation for standard steel items (2) The following contract clause is authorized for use in negotiated fixed-price contracts for the purchase of standard steel items:

Price Escalation for Standard Steel Items.

(a) The Contractor hereby warrants that the unit prices stated herein at the date hereof are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be

specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) For deliveries pursuant to the terms of this contract, the aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's said request and the contract shall be modified accordingly. *Provided*, That such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established price, shall be paid for at the applicable increased unit prices so requested; provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

§ 1006.1329 Price escalation for standard steel items (3) In fixed-price call contracts for standard off-the-shelf standard steel items the following clause is authorized:

Price escalation for standard steel products. (a) The Contractor hereby warrants that the unit prices stated herein at the date hereof are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance

of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor, and the contract shall be modified accordingly. If any such requested adjustment in unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's bid notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(d) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) The Contractor also agrees to give the Government any and all discount benefits extended to any company, agency, organization, or individual purchasing or handling like quantities of the supplies covered by this contract.

NOTE: Paragraphs (d) and (e) of the above clause are optional. Paragraph (d) of the clause clearly provides certain benefits to the Contractor and should not be included unless requested by the Contractor and it is deemed necessary to complete the procurement. Paragraph (e) is a so-called "Preferred Customer" clause and obviously does benefit the Government. Paragraph (e) should be included in all cases; however, authority is granted to delete it in those instances where the objections of the Contractor would preclude the possibility of effecting the necessary procurement.

§ 1006.1330 Price escalation for aluminum products. In fixed-price contracts for the purchase of aluminum the following contract clause may be included if the contractor is a producer of aluminum and the items procured are made wholly or in major part of aluminum:

Price escalation for aluminum products. The Contractor hereby warrants that the unit prices stated herein on the date set for opening of bids or offers are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, after the date set for opening of bids or offers and during the per-

formance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price and no increase shall be granted unless the Contractor's applicable established price has increased subsequent to the date set for opening of bids or offers.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's bid notice; and unless the agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's bid request and the contract shall be modified accordingly: *Provided*, That such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b).

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested: *Provided*, Such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in the Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested: *Provided*, Such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

§ 1006.1331 Fixed-price guaranty. Where desirable, the following clause may be inserted in fixed price contracts which call for tangible articles:

Guaranty. (a) The Contractor guarantees that at the time of delivery thereof the articles provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract.

(b) Notwithstanding any other provision of this contract, final acceptance of the supplies (as defined in the clause of this contract entitled "Inspection") shall be conclusive except as regards (i) fraud, (ii) such gross mistakes as amount to fraud, or (iii) any defects or failure to conform with contract requirements (whether latent or patent) as to which the Government notified the Contractor within one (1) year after the

date of final acceptance. The Contractor shall promptly remedy (either at its plant or at such other place as may be agreed upon between the Contractor and the Contracting Officer) any such defects or failures by correction or replacement at no increase in the contract price; provided that applicable tooling and drawings, if otherwise unavailable to the Contractor by order of the Government, are made available, and provided further that the cost of any transportation in connection with the return of supplies for the purpose of such correction or replacement shall be borne by the Government. Provisions of this clause shall be applicable with respect to any supplies which the Contractor corrects or replaces pursuant to it.

(c) If the Government does not require correction or replacement of a defective or nonconforming article, as provided for hereinabove, the Contractor, if required by the Contracting Officer within a reasonable time after the notice of defect or nonconformance, shall repay such portion of the contract price of the article as is equitable under the circumstances.

§ 1006.1332 Option to terminate fixed overhead rates. All cost-plus-a-fixed-fee contracts in which the clause set forth in § 1006.1326 is contained, will include the following clause:

Option to terminate fixed overhead rates. (a) Either party to this contract shall have the option to terminate the operation of fixed overhead rates, as provided in clause _____ hereof, in the event that a reasonably accurate forecast of overhead rates is determined to be impracticable. The option to terminate the use of fixed overhead rates for the future period shall be invoked on written notice, prior to the effective date of overhead rate revision for the next succeeding period.

(b) Termination of fixed overhead rates shall be evidenced by a supplemental agreement to this contract, providing for reimbursement of overhead on the basis of audited actual cost for the period subsequent to the date of termination under this clause.

§ 1006.1333 Inspection specifications. The following clause may be included in any supply contract calling for the furnishing of aircraft or associated equipment:

Inspection specification. The Contractor's Quality Control System hereunder shall conform to the general requirements set forth in Military Specification MIL-Q-5323, dated 8 December 1950, as said specification may from time to time be amended.

§ 1006.1334 Ceiling prices. All fixed-price supply contracts, including exhibits submitted under fixed price open and call contracts, shall contain the following certification:

Ceiling prices. The Contractor warrants that the prices shown are not in excess of applicable ceiling prices, if any, established by the Economic Stabilization Agency or other authorized agency, and in effect upon the date hereof, for the supplies or services to be furnished hereunder.

§ 1006.1335 Recovery of pension benefits to the Government. The following clause will be included in all negotiated supply contracts which exceed, or may exceed, one million dollars:

Recovery of pension benefits to the Government. Within nine months following termination or completion of this contract the Contractor will submit to the Contracting Officer a statement of the value of the nonvested retirement benefits cancelled as a result of dismissal of employees together with

extracts from the records of the Contractor showing how said value is arrived at. Upon receipt of such statement the Contractor and the Contracting Officer shall negotiate to determine the amount of the refund or allowance, if any, which is due to the Government by reason of the fact that such cancelled benefits were purchased in connection with work under Government contracts. The amount agreed upon by negotiation shall be paid by the Contractor to the Government in cash or by credit against sums due from the Government to the Contractor as may be agreed upon. Failure to agree upon the amount or method of repayment shall be treated as a dispute within the meaning of the clause hereof entitled "Disputes"

SUBPART N—APPROVED CONTRACT FORMS (STANDARD, DEPARTMENT OF DEFENSE, AND AIR FORCE)

§ 1006.1401 *Scope of subpart.* This subpart sets forth instructions for the use of approved contract forms (Standard, Department of Defense, and Department of the Air Force) which are prescribed for use within the Air Force.

§ 1006.1402 *Applicability.* Use of the contract forms prescribed in this part is governed by the Armed Services Procurement Regulation (Subchapter A, Chapter IV of this title) Subchapter J of this chapter, or other special regulations or directives that may be issued for the particular contract concerned.

§ 1006.1403 *Contract clauses.* (a) *General.* Many of the contract clauses to be included when these forms are used are not set forth in full in the forms themselves but are incorporated only by reference to sections of Subchapter A, Chapter IV of this title or particular sections of Subchapter J of this chapter.

(b) *Short forms.* Where, as in the case of some of the short contract forms, for example, DA AGO Form 383, Order and Voucher for Purchase of Supplies or Services Other Than Personal, and DD Form 327, Contract for Movement of Household Goods and Effects, the forms themselves contain shorter or modified versions of contract clauses, the use of shorter or modified forms is authorized notwithstanding the provisions of the preceding subparts of this part.

§ 1006.1404 *Deviations.* Deviations in format, size, or content, of approved contract forms are not permitted except as authorized herein, unless prior written approval is obtained in each case, from the Deputy Chief of Staff, Materiel, Headquarters United States Air Force.

§ 1006.1405 *Local reproduction.* Unless specifically authorized in this part, the forms listed in this part may not be reproduced locally except with the prior approval of the Air Adjutant General.

§ 1006.1406 *Special purpose contract forms.* Contract forms which have heretofore been approved for particular use by the Deputy Chief of Staff, Materiel, Headquarters United States Air Force, and which are not listed in this subpart on account of their special nature, may continue to be used by the procuring activity concerned in accordance with its instructions if such forms are not inconsistent with the policies of Armed Services Procurement Regulation or Subchapter J of this chapter.

§ 1006.1407 *Supply of certain forms—* (a) *Requisitions.* Supply of the forms listed below should be requisitioned through normal publications supply channels. Requisitions will be held to the absolute minimum stock necessary to meet current requirements to avoid waste upon change in format by the Department of the Air Force. Requisitions for cut-sheet forms will contain nomenclature indicated below—

- (1) Standard Form 26, Award (Supply Contract).
- (2) Standard Form 30, Invitation and Bid (Supply Contract).
- (3) Standard Form 31, Schedule (Supply Contract).
- (4) Standard Form 33, Invitation, Bid, and Award (Supply Contract).
- (5) Standard Form 36, Continuation Sheet (Supply Contract).
- (6) Standard Form 1036, Statement and Certificate of Award.
- (7) Standard Form 32, General Provisions (Supply Contract).
- (8) DD Form 351, Negotiated Contract (Department of Defense).
- (9) DD Form 351-1, Schedule.
- (10) DD Form 351-2, Signature Page.
- (11) WD Form 18, Purchase Order (with reverse side blank).

(b) *Reproducible masters.* Cut sheet forms indicated in paragraph (a) of this section, will be used when 10 copies or less, including original, are required or when the volume of contracts does not justify the use of more expensive reproducible masters and the operation of reproduction equipment. When more than 10 copies, including original, of the forms are required or the volume of contracts justifies such action, the use of the die-impressed stencils to produce multiple copies of Standard Forms 30, 31, 33, and 36; DD Forms 351, 351-1, and 351-2; and WD Form 18 is authorized.

(c) *Preprinted backs.* The Terms and Conditions of the Invitation for Bids which appears on the back of Standard Forms 30 and 33 are identical and have been printed as one standard back on reproducible paper. This paper will be used in reproducing multiple copies of Standard Forms 30 and 33 from the stencil masters.

§ 1006.1408 *Supply contract; formal advertising (long form) Standard Forms 26, 30, 31, and 32.* (a) This form of contract consists of Standard Form 26, Award; Standard Form 30, Invitation and Bid, Standard Form 31, Schedule; and Standard Form 32, General Provisions Standard Form 36, Continuation Sheet, will be used to provide additional space if Standard Form 26 does not provide sufficient space.

(b) The decision concerning the use of the long-form method or the short-form method for particular procurements is discretionary with the contracting officer, subject to any limiting instructions that may be issued by the head of the procuring activity concerned.

(c) General provisions, in addition to those contained in Standard Form 32, may be added to the contract as required by the Armed Services Procurement Regulation, Subchapter J of this chapter, and other pertinent directives, with appropriate reference in the Schedule. Any other contract clauses that are ap-

proved for use may be added as additional general provisions and incorporated by reference in the Schedule, or may be placed in the Schedule: *Provided*, That they are not inconsistent with the General Provisions in the form.

§ 1006.1409 *Supply contract; formal advertising (short form), Standard Forms 33 and 32.* (a) This form of contract consists of Standard Form 33, Invitation, Bid, and Award, and Standard Form 32, General Provisions. Standard Form 36, Continuation Sheet, will be used to provide additional space if the award portion of Standard Form 33 is not sufficient.

(b) Concerning the use of this short-form method, see § 1006.1408 (b)

(c) Concerning the insertion of additional general provisions, see § 1006.1408 (c)

§ 1006.1410 *Supply contract; negotiated (long form) DD Form 351.* (a) This form of contract consists of DD Form 351, Negotiated Contract; DD Form 351-1, Schedule Page; and DD Form 351-2, Signature Page.

(b) This form is authorized for use in negotiated contracts, whether fixed-price or cost-reimbursement, for the procurement of supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. There is no monetary limitation on the use of the form and it may, therefore, be used regardless of amount. This form will be used with Standard Form 32 or such provisions as may be authorized for incorporation in particular classes of contracts. Standard Form 36 may be used to provide additional space if DD Form 351-1 is not sufficient.

§ 1006.1411 *Order and voucher for purchase of supplies or services other than personal, DA AGO Form 383.* (a) This form of contract consists of DA AGO Forms 383 (front side) and 383a (reverse side), with memorandum copies (yellow) DA AGO Form 383c (yellow) is the carbon copy of DA AGO Form 383, and DA AGO Form 383a (yellow) is the carbon copy of DA AGO Form 383a. The form is used in connection with the small purchases procedure authorized under Air Force Regulation 70-15.

(b) A continuation sheet (DA AGO Form 383b) is provided for this form with reverse side blank. DA AGO Form 383d (yellow) is the carbon copy of DA AGO Form 383b; both of these forms are available in cut-sheet and 10-copy carbon interleaved snap-out form.

§ 1006.1412 *Purchase order; WD Form 18.* (a) WD Form 18 is used for negotiated purchases only. The Conditions appearing on the reverse of this form are now obsolete and are replaced by Standard Form 32, General Provisions, which form will be used with WD Form 18. Standard Form 36, Continuation Sheet, may be used with this form when additional space is required.

(b) This form is available for optional use for procuring any supplies or services (other than personal) regardless of the number of payments involved, where:

- (1) The amount of the purchase is less than \$100,000.

(2) No special contract provisions are required, the insertion of which in the particular case would unduly complicate the form.

(3) Signature by the contractor evidencing acceptance of the order is not required, and is not desired. Signature by the contractor is not required where the amount of the order is not in excess of \$5,000, or the amount of the order is in excess of \$5,000 but less than \$100,000, and the order is preceded by an oral or written quotation or is based on a price list.

(c) Where purchases exceed \$1,000, Standard Form 32 will be attached to the form. Where purchases do not exceed \$1,000, a continuation sheet, in lieu of Standard Form 32, will be attached containing the following contract clauses:

(1) Convict labor as set forth in § 406.103-5 of this title.

(2) Nondiscrimination in employment as set forth in § 406.103-18 of this title.

(3) Officials not to benefit as set forth in § 406.103-19 of this title.

(4) Covenant contingent fees as set forth in § 406.103-20 of this title.

(5) Renegotiation. (Insert the same clause authorized for DA AGO Form 383 in Air Force Regulation 70-15A, January 31, 1952.)

(6) Ceiling prices as set forth in § 406.103-22 of this title. In either event, additional or optional contract clauses shall be inserted on continuation sheets as required by the Armed Services Procurement Regulation, Subchapter J of this chapter, or procuring activity instructions.

§ 1006.1413 *Delivery order*. DA AGO Form 383. (a) Pending the development of a Department of Defense delivery order form, DA AGO Form 383 is authorized for use as a delivery order in accordance with Air Force Regulation 70-15.

(b) Delivery orders are used to place orders under existing contracts, and are signed by the contracting officer only and not by the contractor.

§ 1006.1414 *Contract for purchase of services other than personal*. AF Form 195. AF Form 195 is authorized for use in the procurement of services of architect-engineers on a fixed-price basis, after negotiation, in accordance with Air Force Regulation 93-13.

§ 1006.1415 *Contract for movement of household goods and effects*. DD Form 327. (a) DD Form 327 will be used in accordance with the instructions contained in section II, Commercial Traffic Bulletin 13, 1946.

(b) This form is not applicable for use in effecting procurement outside the United States, its Territories and Possessions. Authority is granted for the Commanding General, Air Materiel Command, to prescribe suitable forms for such procurement, using this form as a general guide.

§ 1006.1416 *Invitation for bids (construction contract)*. WD Standard Procurement Form 116. (a) WD Standard Procurement Form 116 is prescribed for use in the procurement of construction by formal advertising pending the prepa-

ration of a revised Invitation for Bids (construction contract) form. This form may be reproduced locally on 8 x 10½ paper by use of stencil, master, direct-image plate or typewriter only. Printing by typesetting or photo-mechanized process is prohibited.

WD STANDARD PROCUREMENT FORM 116

Bid No. _____ Bidder _____
(Do not write above this line)
Serial No. _____

INVITATION FOR BIDS (CONSTRUCTION CONTRACT)

(Address) _____
(Date) _____

Project:

1. Sealed bids in _____, (duplicate unless otherwise specified herein) will be received until _____, 19____, and then publicly opened, for furnishing all plant, labor, materials, and equipment and performing all work for the above-described project in strict accordance with the specifications, schedules, drawings, and addenda as follows:

2. Bids will be submitted in sealed envelopes upon the attached Government Form of bid, and marked in the upper left-hand corner "Bid under Serial No. _____ to be opened _____, 19____" the serial number indicating the project for which the bid is submitted. The bidder who is awarded the contract will be required to execute the contract form for construction (MCP Form 71-4) which is attached hereto.

3. The right is reserved, as the interest of the Government may require, to reject any and all bids, to waive any informality in bids received, and to accept or reject any or all items of any bid, unless the bidder qualifies such bid by specific limitation.

4. Bid bond on Standard Form 21 in a penal sum of not less than _____ percent of the bid price (20 percent unless otherwise specified) will be required with each bid if the bid price is in excess of \$2,000.

5. Bidders should carefully examine the drawings and specifications, visit the site of the work, and fully inform themselves as to all conditions and matters which can in any way affect the work or the cost thereof. Should a bidder find discrepancies in, or omissions from, the drawings, specifications, or other documents, or should he be in doubt as to their meaning, he should at once notify the Contracting Officer and obtain clarification prior to submitting any bid.

6. Each bidder (shall inclose with his bid) (shall furnish upon request) a statement of whether he is now or ever has been engaged in any work similar to that covered by the specifications herein, the year in which such work was performed, and the manner of its execution, and giving such other information as will tend to show the bidder's ability to prosecute the required work.

7. The bidder shall state in his bid that he has available or under his control plant of the character and in the amount required to complete the proposed work within the specified time. Each bidder shall, (upon request by the Contracting Officer), furnish a list of the plant proposed for use on the work.

8. Where sets of drawings are requested by bona fide bidders a maximum of _____ sets will be furnished any one bidder.

A deposit of \$_____ per cent will be required to insure their return. The deposit should be in the form of a United States money order or a certified check made payable to the "Treasurer of the United States." The deposit, if made, will be refunded if the drawings are returned in good condition, transportation prepaid, to the

¹Delete inapplicable provision.

issuing office within 15 days after the opening of bids.

9. When not otherwise specified in paragraph 1 of the Special Conditions of the attached specifications, the bidder must state the least number of calendar days (counting Sundays and holidays) after date of receipt of notice to proceed in which he will complete performance. In stating time, the bidder should make due allowance for probable difficulties which may be encountered. For the purpose of comparing bids, there will be added to each bid other than the one offering to complete in the shortest time, an amount equal to the daily liquidated damages named in the Special Conditions of the attached specification multiplied by the number of calendar days that such bidders have named for performance of the work in excess of the days named by the bidder proposing to do the work in the shortest time.

10. Modifications prior to date set for opening bids. The right is reserved, as the interest of the Government may require, to revise or amend the specifications and/or drawings prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an addendum or addenda to this Invitation for Bids. Copies of such addenda as may be issued will be furnished to all prospective bidders. If the revisions and amendments are of a nature which require material changes in quantities or prices bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the Contracting Officer will enable bidders to revise their bids. In such case, the addendum will include an announcement of the new date for opening bids.

§ 1006.1417 *Bid (construction contract)*. WD Standard Procurement Form 117. WD Standard Procurement Form 117 is prescribed for use in the procurement of construction by formal advertising pending the preparation of a revised bid (construction contract) form. This form may be reproduced locally on 8 x 10½ paper by use of stencil, master, direct-image plate or typewriter only. Printing by typesetting or photo-mechanized process is prohibited.

WD STANDARD PROCUREMENT FORM 117

Bid No. _____
Serial No. _____

BID (CONSTRUCTION CONTRACT)

Date _____

To: _____

(Address)

Project:

In compliance with your invitation for bids dated _____ the undersigned hereby proposes to furnish the plant, labor, materials, and equipment and perform all work for the above-described project in strict accordance with the specifications, schedules, drawings, and addenda numbered—

for consideration of: \$ (_____ dollars and _____ cents) and agrees, upon receipt of written notice of an award of the contract within _____ days (30 days unless otherwise specified herein), after the date of opening of the bids, that he will execute the contract (MCP Form 71-4), in accordance with this bid as accepted, and if the consideration of the contract will exceed \$2,000 in amount will furnish to the Government a performance bond on Standard Form 25 or Standard Form 25B and a payment bond on Standard Form 25A or Standard Form 25C with good and sufficient surety or sureties, as required by the specifications, at the time that the contract is executed.

The bidder further agrees that if awarded the contract he will commence to work within _____ calendar days after receipt of written notice to proceed ¹(provide the plant and equipment as set forth in attached schedule) and that he ¹(will fully complete the work ready for use not later than _____ calendar days after the date of receipt of notice to proceed) ¹ (will prosecute the work at an average rate of not less than _____ cubic yards per month after the limiting date fixed for commencement as specified in paragraph SC-1 of the specifications.)

Security (Bid Bond—Standard Form 24) if required by the invitation is inclosed.

NOTE: If the bidder is a corporation, indicate State of incorporation under signature; and if a partnership, give full names of all partners.

By _____

(Title)

(Business address)

§ 1006.1418 *Request for proposal and contractor's proposal (short form)* WD Form 104. (a) WD Form 104 is a short form and is used for negotiated purchases only. It may be used for procurement by negotiation of supplies (excluding construction work) for small amounts where effective competition exists and where the information to be obtained from suppliers may ordinarily be confined substantially to the quotation of prices.

(b) Changes may be made in this form to accommodate the needs of the particular procurement. This also applies to the statutory authority now appearing on the form, which should be Public Law 413, 80th Congress. Wherever the statutory citation has not been changed, the form will be corrected and certain other minor changes made.

§ 1006.1419 *Request for proposal and contractor's proposal (long form)* WD Forms 105, 105A, 105B, and 105C. (a) This long form, which consists of WD Forms 105, Request for Proposal and Contractor's Proposal; 105A, Cost Analysis; 105B, List of Subcontracts and Supply Orders; and 105C, Instructions for Completing WD Form 105, is used for negotiated purchases only. These forms may be used for procurement, by negotiation, of supplies other than construction, when, in the opinion of the contracting officer, detailed cost or price information should be obtained from suppliers as an aid to adequate negotiation. Within the scope of the foregoing rule, the Air Materiel Command may prescribe more precisely the size and types of procurement for which these forms are to be used.

(b) The use of the related forms with WD Form 105 is discretionary. The procurement office is required to select and specify (within established limits) the data expected. Thus, the procurement office has latitude to use the related forms according to the necessities of particular situations, and may relieve the supplier of the task of compiling information which is not pertinent to the procurement or which is already known to the procurement office. No contractor will be asked to complete the forms re-

lated to WD Form 105 with respect to information which will not be pertinent or useful in properly effecting the particular procurement, or which is already on file with the procurement office. Where necessary, the information obtained through the use of the form may be clarified or amplified through correspondence or personal negotiation. The information submitted in or with WD Form 105 and related forms will be used as a basis of negotiations with the prospective contractor, in accordance with the Armed Services Procurement Regulation, Subchapter J of this chapter, and any other instructions that may be in force from time to time. One copy of WD Form 105C, Instructions for Completing WD Form 105, should be sent to each contractor along with the necessary member of counterparts of WD Form 105.

(c) Changes may be made in these forms to accommodate the needs of the particular procurement. This also applies to the statutory authority which is Public Law 413, 80th Congress. Wherever the statutory citation has not been changed, the form will be corrected and certain other minor changes made.

§ 1006.1420 *Contractor's statement of contingent or other fees for soliciting or securing contract; Standard Form 119.* Standard Form 119 will be used without deviation in cases in which:

(a) JAAF PC 12, 1950, requires its use, and

(b) The Contracting Officer desires to obtain information from contractors or prospective contractors concerning whether they have employed or retained any company or person (other than a full-time employee) to solicit or obtain contracts.

§ 1006.1421 *Abstract of bids (short form)* WD Form 14. This form consists of one sheet printed on both sides. Inapplicable instructions appearing on the reverse of this form will be disregarded.

§ 1006.1422 *Abstract of bids (long form)* WD Form 29. This form consists of one sheet printed on both sides. Inapplicable instructions appearing on the front page of this form will be disregarded.

§ 1006.1423 *Abstract of bids (long form—continuation sheet)* WD Form 29A. This form consists of one sheet printed on both sides.

§ 1006.1424 *Standard forms of bonds for Government contracts.* (a) The following Standard Forms, revised November 1950, have been prescribed for use with Government contracts:

- a. Standard Form 24, Bid Bond.
- b. Standard Form 25, Performance Bond.
- c. Standard Form 25A, Payment Bond.
- d. Standard Form 27, Performance Bond (Corporate Cosurety Form).
- e. Standard Form 27A, Payment Bond (Corporate Cosurety Form).
- f. Standard Form 27B, Continuation Sheet (Corporate Cosurety Bond).
- g. Standard Form 34, Annual Bid Bond.
- h. Standard Form 35, Annual Performance Bond.

(b) Present supplies of Standard Forms of Bonds for Government contracts (24, 25, 25-A, 25-B, 25-B1, 25-B3,

25-C, 25-C1, 25-C3, 34, and 35) may be used until exhausted.

§ 1006.1425 *Security agreement; DD Form 441.* Department of Defense Security Agreement, DD Form 441 will be used in the following instances:

(a) For all precontract negotiations in which classified security information is furnished to a bidder and a DD Form 441 has not been executed.

(b) For effecting a new Security Agreement upon expiration of Security Agreements now in effect.

(c) As a substitution for February 1951 edition of DD Form 441, where the provisions of section I (B), "Security Controls," are applicable for the security protection or cryptographic information or "Restricted Data."

(d) When the prospective bidder or contractor desires to exercise the option to execute the revised Security Agreement in lieu of the February 1951 edition presently in effect.

NOTE: A substantial revision of this part is currently underway within the Department of the Air Force. This revision, when issued, will be published promptly in the FEDERAL REGISTER.

[SEAL]

K. E. THIEBAUD,
Colonel, U. S. Air Force,
Air Adjutant General.

[F R. Doc. 53-7095; Filed, Aug. 12, 1953;
8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 910]

ALASKA

WITHDRAWING PUBLIC LANDS FOR USE OF THE DEPARTMENT OF THE ARMY FOR MILITARY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F R. 4831) it is ordered as follows:

Subject to valid existing rights the following-described public lands are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the Department of the Army for military purposes:

Beginning at a point, from which Station 1146-69.4 on the Alaska Highway, as established by the Bureau of Public Roads and which lies northwesterly 8 miles from the west bank of the Gerstle River, bears North, 31° 24' E., 15,840 feet, approximate latitude 63° 50' N., longitude 145° 12' W., thence

S. 31° 24' W., 23,760.0 feet;
S. 58° 36' E., to a point in the west bank of the Gerstle River;
Northeasterly, along the west bank of the Gerstle River to the south right-of-way line of the Alaska Highway;
N. 61° 41.5' W., 1,320.0 feet;
S. 56° 30' W., 19,049.5 feet;
N. 58° 36' W., 34,124.88 feet to the point of beginning.

The tract described contains approximately 20,000 acres.

¹ Delete inapplicable provision.

It is intended that the lands described above shall be returned to the Administration of the Department of the Interior when they are no longer needed for the purposes for which they are reserved.

ORME LEWIS,
Assistant Secretary of the Interior.

AUGUST 7, 1953.

[F. R. Doc. 53-7099; Filed, Aug. 12, 1953;
8:46 a. m.]

[Public Land Order 911]

COLORADO

WITHDRAWING PUBLIC LANDS FOR USE OF
ATOMIC ENERGY COMMISSION

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F. R. 4831) it is ordered as follows:

Subject to valid existing rights, the public lands in the following-described areas in Colorado are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the Atomic Energy Commission:

NEW MEXICO PRINCIPAL MERIDIAN

T. 47 N., R. 20 W. (partly unsurveyed),
Secs. 1 and 2;
Secs. 10 and 11.

The areas described aggregate 2,560 acres.

This order shall take precedence over but shall not otherwise modify departmental order of April 8, 1935, establishing Colorado Grazing District No. 4.

It is intended that the lands above described shall be returned to the administration of the Department of the Interior when they are no longer needed for the purpose for which they are reserved.

ORME LEWIS,
Assistant Secretary of the Interior

AUGUST 7, 1953.

[F. R. Doc. 53-7096; Filed, Aug. 12, 1953;
8:45 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

MISCELLANEOUS AMENDMENTS TO LIST OF TREATIES

In the matter of amendment to Appendix A to Part 2 of the Commission's rules and regulations, list, for information only, of treaties.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 5th day of August 1953;

The Commission having under consideration Appendix A to Part 2 of its rules and regulations; and

It appearing, that the proposed change is not substantive and does not in any way affect the requirements of any of the Commission's rules and regulations; and

It further appearing, that because of the informational nature of the proposed changes, notice and public procedure thereon as prescribed by section 4 (a) of the Administrative Procedure Act is unnecessary, and that this order may be made effective immediately for the same reasons.

It is ordered, That, effective immediately, Appendix A to Part 2 of the Commission's rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066 as amended; 47 U. S. C. 154)

Released: August 7, 1953.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] W. P. MASSING,
Acting Secretary.

1. Amend date which is included in the title of Appendix A to read as follows: "(As of July 1, 1953)."

2. Under Paragraph 1. "1937, TS 938" add the following parenthetical notation: "(Not available at Government Printing Office)."

3. Under Paragraph 1. "1941, EAS 227" add the following parenthetical notation: "(Not available at Government Printing Office)."

4. Under Paragraph 1. "1949—Inter-American Radio Agreement—" add TIAS 2489 as the Series number and delete the parenthetical notation at the end of the subject matter.

5. Under Paragraph 1. "1950—Radio communications between amateur stations on behalf of third parties—Ecuador" add TIAS 2433 as the Series number and delete the parenthetical notation.

6. Under Paragraph 1. Add the following chronologically:

1951 TIAS 2459 Agreement between the United States of America and Cuba concerning the control of electromagnetic radiation. Entered into force: December 18, 1951.

7. Under Paragraph 1. Add the following chronologically:

1951 TIAS 2259 Use of Facilities of Radio Ceylon. Agreement between the United States and Ceylon. Entered into force: May 14, 1951.

8. Under Paragraph 1. "1952—Radio communications between amateur stations on behalf of third parties—Cuba" add TIAS 2520 as the Series number and delete the parenthetical notation.

9. Under Paragraph 1. "1952—Treaty with Canada effective May 15, 1952" add TIAS 2508 as the Series number and delete the last sentence of the subject matter.

10. Under Paragraph 1. Add the following chronologically:

1952 TIAS 2705 London Revision (1952) of the London Telecommunications Agreement (1949) between the United States and Canada and Certain British Common-

wealth Governments. Entered into force: Oct. 11, 1952 (Not available at Government Printing Office).

11. Under Paragraph 1. Add the following chronologically:

1952 TIAS 2548 United States and Denmark. Registration of Frequencies Used in Greenland by United States authorities. Entered into force: April 4, 1952.

12. Under Paragraph 1. "1952—Agreement between the United States of America and Canada which Assigns Television Frequency Channels to Cities within 250 Miles of the United States-Canada Border" add TIAS 2594 as the Series number.

13. Under Paragraph 1. Add the following chronologically:

1948 TIAS 2495 International Convention for the Safety of Life at Sea and annexed Regulations. Signed at London, June 10, 1948. Entered into force: November 19, 1952.

14. Under Paragraph 1. Delete the following:

1929 TS 910 Safety of Life at Sea Convention with Regulations between the United States of America and Other Powers, signed at London May 31, 1929.

15. Under Paragraph 1. Delete the following:

1930 TS 921 Amendment to Regulation XIX of Annex 1 to the Safety of Life at Sea Convention. December 31, 1930.

16. Under Paragraph 2: Add the following in chronological order:

1929 TS 910 Safety of Life at Sea Convention with Regulations between the United States of America and Other Powers, signed at London May 31, 1929. Denunciation notified by the United States November 19, 1952, to be effective November 19, 1953.

17. Under Paragraph 2: Add the following chronologically:

1930 TS 921 Amendment to Regulation XIX of Annex 1 to the Safety of Life at Sea Convention. December 31, 1930. Denunciation notified by the United States November 19, 1952, to be effective November 19, 1953.

18. Under Paragraph 3: "1952—Agreement between the United States of America and Canada for the purpose of promoting Safety on the Great Lakes by Means of Radio. The Agreement applies to vessels of all countries as provided for in Article 3—etc." amend the entire entry to read as follows: "1952—Agreement between the United States of America and Canada for the purpose of promoting Safety on the Great Lakes by Means of Radio. The Agreement applies to vessels of all countries as provided for in Article 3. Enters into force: November 13, 1954. (Not available at the Government Printing Office.)"

19. Under Paragraph 3: Delete the following: "1948—International Convention for the Safety of Life at Sea and annexed Regulations. Signed at London, June 10, 1948. Enters into force: November 19, 1952, subject to the provisions of Article 11 of the Convention."

[F. R. Doc. 53-7134; Filed, Aug. 12, 1953;
8:53 a. m.]

PROPOSED RULE MAKING

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 9]

AERONAUTICAL SERVICES

LIGHTER-THAN-AIR CRAFT FREQUENCIES

In the matter of amendment of Part 9 of the Commission's rules and regulations governing Aeronautical Services; Docket No. 10623.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. It is proposed to amend § 9.315 of Part 9 of the Commission's rules and regulations governing aeronautical services as shown below, in order to permit the United States to put into effect the Atlantic City (1947) Table of Frequency Allocations in accordance with the provisions of the Agreement concluded at the Extraordinary Administrative Radio Conference (Geneva 1951), by deleting the frequencies 6615 kc. and 11910 kc. as frequencies available for assignment to lighter-than-air craft and to aeronautical stations serving lighter-than-

air craft. Under the EARC Agreement these frequencies are no longer available for this service. The frequencies 6615 kc. and 11910 kc. are not being replaced with frequencies which may be assigned solely for lighter-than-air operations since the aeronautical mobile (R) frequencies are available for assignment to lighter-than-air craft and the aeronautical stations serving the lighter-than-air craft in the same manner and extent as they are available for assignment to aeronautical land and aircraft radio stations.

3. The proposed amendment is issued under the authority of sections 303 (c) (f) and (r) of the Communications Act of 1934, as amended.

4. Any interested person may file with the Commission on or before August 25, 1953, a written statement or brief in support of, or in opposition to, the proposed amendment. Comments or briefs in reply to the original comments or briefs may be filed within 10 days from the last day for filing the said original comments or briefs. The Commission will consider such comments, briefs, and statements before taking action in this

matter. If any comments are received which appear to warrant the Commission in holding an oral argument before final action is taken, notice of the time and place of such oral argument will be given such interested parties.

5. In accordance with the provisions of § 1.764 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: August 5, 1953.

Released: August 7, 1953.

FEDERAL COMMUNICATIONS
COMMISSION,
W. P. MASSING,
Acting Secretary.

Section 9.315 is amended by adding the frequency 3281 kc. to the list of frequencies which may be assigned to lighter-than-air craft and to aeronautical stations serving lighter-than-air craft.

[F. R. Doc. 53-7133; Filed, Aug. 12, 1953; 8:53 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MONTANA

RESTORATION ORDER UNDER FEDERAL POWER ACT POWER SITE RESERVE NO. 164

AUGUST 6, 1953.

Pursuant to determination DA-140-Montana, of the Federal Power Commission issued July 10, 1953, and in accordance with Order No. 427, section 2.22 (a) (4) of the Director, Bureau of Land Management, approved August 16, 1950 (15 F. R. 5641) it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals the lands hereinafter described so far as they are withdrawn and reserved for power purposes are hereby restored to the status of public domain under the public land laws as provided by law, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818) as amended, and subject to the reservation and stipulation of the right of the United States, its permittees or licensees to use the land for power purposes, that no use shall be made by others which will in any way interfere or be inconsistent with the use of the land by the United States, its permittees, or licensees for power purposes; that any structures, machinery, or improvements placed thereon which shall be found to interfere with power development shall be removed or relocated as may be necessary to eliminate interference with such development, without expense to the United States, its permittees or li-

censees, and that the United States, its permittees or licensees shall not be held liable for any damage to structures, machinery or improvements placed thereon resulting from construction, operation or maintenance of hydroelectric power facilities authorized by the United States.

PRINCIPAL MERIDIAN, MONTANA

T. 6 N., R. 5 W.,

Sec. 9, $W\frac{1}{2}$,

Sec. 14, $S\frac{1}{2}SW\frac{1}{4}$,

Sec. 15, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$,

Sec. 17, $E\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}$,

Sec. 22, $N\frac{1}{2}$, $NE\frac{1}{4}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$,

Sec. 23, $N\frac{1}{2}$, $N\frac{1}{2}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$,

Sec. 24, $NW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$,

$NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$,

Sec. 25, $NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$,

$N\frac{1}{2}SE\frac{1}{4}$.

T. 6 N., R. 4 W.,

Sec. 30, lot. 3, $E\frac{1}{2}SW\frac{1}{4}$,

Sec. 31, $SW\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$.

The area described aggregates 2,928.89 acres.

The land is rolling to rough and is primarily valuable and suitable for wildlife purposes; watershed protection, timber production and limited grazing use. None of the land is suitable for agricultural purposes.

No applications for these lands may be allowed under the homestead, small tract, desert land, or any other non-mineral public land laws, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application. Applications filed involving any or all of these lands must describe the land in accord-

ance with the most recent approved plat of survey.

The land described shall be subject to application by the State of Montana for a period of 90 days from the date of publication of this order in the FEDERAL REGISTER for a right of way for public highways or a source of materials for the construction and maintenance of such highways, subject to section 24 of the Federal Power Act, as amended, and the stipulations herein provided.

This order shall not otherwise affect the status of the lands until 10:00 a. m. on the 91st day after date of the publication of this order in the FEDERAL REGISTER. At that time, the land shall be subject to application, petition, location and selection, subject to valid existing rights, the provisions of existing withdrawals the requirements of applicable laws and the 90 day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (50 Stat. 747; 43 U. S. C. 279-284) as amended.

W. B. WALLACE,
Regional Administrator

[F. R. Doc. 53-7136; Filed, Aug. 12, 1953; 8:54 a. m.]

Geological Survey

CALIFORNIA AND WYOMING

DEFINITIONS OF KNOWN GEOLOGIC STRUCTURES OF PRODUCING OIL AND GAS FIELDS

Former paragraph (c) of § 227.0, Part 227, Title 30, Chapter II, Code of Fed-

eral Regulations (1947 Supp.) codification of which has been discontinued by a document published in Part II of the FEDERAL REGISTER dated December 31, 1948, is hereby supplemented by the addition of the following list of structures defined effective as of the dates shown:

NAME OF FIELD, EFFECTIVE DATE, AND ACREAGE

(1) CALIFORNIA		
Coalinga Eastside Field (additional)	Apr. 9, 1953	10,743
Cymric Field (revision)	May 25, 1953	4,842
McKittrick Field (revision)	do	5,087
Santiago Field	Mar. 20, 1947	590
South Belridge Field (additional)	Apr. 9, 1953	11,501
South Mountain Field	do	2,390

(2) WYOMING		
Cole Creek Field (revision)	Feb. 24, 1953	3,630
East Sussex Field	Sept. 14, 1951	1,440
Little Buck Creek Field (revision)	June 9, 1951	1,160
Meadow Creek Field	Mar. 13, 1952	5,161
North Sage Spring Creek Field	Apr. 9, 1952	1,320
Skull Creek Field (revision)	June 11, 1953	2,900
South Teapot Field	July 20, 1951	240
Sussex Field	Jan. 22, 1952	1,623
West Sussex Field	May 9, 1952	830

W. E. WRATHER,
Director
[F. R. Doc. 53-7135; Filed, Aug. 12, 1953;
8:54 a. m.]

Office of the Secretary
ALASKA

NOTICE FOR FILING OBJECTIONS TO ORDER
WITHDRAWING PUBLIC LANDS FOR USE OF
THE DEPARTMENT OF THE ARMY FOR MIL-
ITARY PURPOSES¹

For a period of 60 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

ORME LEWIS,
Assistant Secretary of the Interior.
AUGUST 7, 1953.
[F. R. Doc. 53-7098; Filed, Aug. 12, 1953;
8:45 a. m.]

¹ See Title 43, Chapter I, Appendix, PLO 910, *supra*.

COLORADO

NOTICE FOR FILING OBJECTIONS TO ORDER
WITHDRAWING PUBLIC LANDS FOR USE OF
ATOMIC ENERGY COMMISSION¹

For a period of 30 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

ORME LEWIS,
Assistant Secretary of the Interior.
AUGUST 7, 1953.
[F. R. Doc. 53-7097; Filed, Aug. 12, 1953;
8:45 a. m.]

DEPARTMENT OF COMMERCE

Office of International Trade
[Case No. 157B]
ATLANTIC & PACIFIC WIRE & CABLE CO.,
INC., ET AL.

ORDER STAYING EFFECTIVENESS OF ORDER
REVOKING AND DENYING LICENSE PRIVI-
LEGES

In the matter of Atlantic & Pacific Wire & Cable Co., Inc., Martin Oboler, President, Irving Rubin, Secretary and Treasurer, 112-01 Northern Boulevard, East Elmhurst, Long Island, New York; respondents; Case No. 157B.

On application of the above-named respondents for a stay as to them of the denial order issued against them and others under date of July 17, 1953, pending hearing and final decision of their appeal therefrom to the Appeals Board of the Department of Commerce, and it appearing that good cause exists for said stay, *It is hereby ordered*, That said denial order, issued on July 17, 1953, and published in the FEDERAL REGISTER on July 23, 1953 (18 F. R. 4345) be and is hereby stayed in all respects as to said respondents until final decision of their appeal therefrom by said Appeals Board.

Dated: August 7, 1953.
JOHN C. BORTON,
Assistant Director for Export Supply.
[F. R. Doc. 53-7128; Filed, Aug. 12, 1953;
8:52 a. m.]

¹ See Title 43, Chapter I, Appendix, PLO 911, *supra*.

DEPARTMENT OF DEFENSE

Department of the Army
CAMDEN BRIDGE TOLLS

TOLL CHARGES OF THE DELAWARE RIVER PORT
AUTHORITY BRIDGE BETWEEN PHILADEL-
PHIA, PA., AND CALIDEN, N. J., NOTICE OF
PREHEARING CONFERENCE

Reference is made to previous notice regarding Camden Bridge Tolls, published in 18 F. R. 4221, July 18, 1953. The above-entitled case is assigned for prehearing conference on August 17, 1953, at 2 p. m., e. d. s. t., at the Camden County Court House, Camden, N. J., for the purpose of formulating issues and considering:

- (1) The simplification of issues;
- (2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;
- (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any of the parties to the proceedings of matters of public record, such as public reports and the like, to the end of avoiding the unnecessary introduction of proof;
- (4) The procedure at the hearing;
- (5) The limitation of the number of witnesses;
- (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits, and
- (7) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

WIL E. BERGIN,
Major General, U. S. Army,
The Adjutant General.
[F. R. Doc. 53-7131; Filed, Aug. 12, 1953;
8:53 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary
ADMINISTRATOR, PRODUCTION AND MARKET-
ING ADMINISTRATION

DELEGATION OF AUTHORITY WITH RESPECT TO
CERTAIN FUNCTIONS AND DUTIES

Pursuant to the powers vested in me by the statutes of the United States, Executive Orders of the President and Reorganization Plan No. 2 of 1953 (18 F. R. 3219) there is hereby delegated to the Administrator, Production and Marketing Administration, all authority of the Secretary of Agriculture with respect to the formulation and issuance of grades and standards, all matters pertaining to the commodity market news and grading and inspection services, and the formulation and issuance of rules and regulations applicable thereto: *Provided, however* That authority with respect to any of the aforementioned functions which is now vested in any other agency of the Department is not so delegated.

The Administrator may redelegate, with or without power of redelegation, to any employee of the United States Department of Agriculture any or all the authority vested in him hereunder.

All action heretofore taken by the Administrator with respect to the foregoing matters is hereby ratified and confirmed, and shall remain in full force and effect unless and until expressly modified, amended, suspended, revoked, or terminated.

Done at Washington, D. C., this 7th day of August 1953.

[SEAL]

E. T. BENSON,
Secretary of Agriculture.

[F. R. Doc. 53-7123; Filed, Aug. 12, 1953;
8:51 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 10346]

JAMES GERITY, JR.

MEMORANDUM OPINION AND ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of James Gerity, Jr., Pontiac, Michigan; Docket No. 10346, File No. BP-8651, for construction permit.

1. The Commission has before it for consideration the following pleadings concerning the above entitled application of James Gerity, Jr., for a new station at Pontiac, Michigan:

(a) Petition for Rehearing, filed June 8, 1953, by WKMH, Incorporated, licensee of WKMF Flint, Michigan;

(b) Petition for Rehearing, filed June 8, 1953, by Chief Pontiac Broadcasting Company;

(c) Opposition to petition of Chief Pontiac for Rehearing, filed June 17, 1953, by James Gerity, Jr.,

(d) Joint Motion, filed June 17, 1953, by James Gerity, Jr. and WKMH, Incorporated;

(e) Answer to Gerity's Opposition, filed June 22, 1953, by Chief Pontiac;

(f) Reply to Answer of Chief Pontiac, filed June 29, 1953, by James Gerity, Jr.,

(g) Petition for Rehearing filed July 3, 1953, by Chief Pontiac Broadcasting Company; and

(h) Opposition to Chief Pontiac Petition for Rehearing filed by James Gerity, Jr. on July 10, 1953.

2. On November 12, 1952, the Commission adopted an Order providing for a consolidated hearing on three mutually exclusive applications, each requesting the use of the facility of 1460 kilocycles, with a power of 500 watts, unlimited time, at Pontiac, Michigan. Two of the three applications were dismissed shortly thereafter, leaving James Gerity, Jr., as the only remaining applicant for the Pontiac facilities in question. The Hearing Examiner opened the hearing on November 17, 1952, but immediately continued the hearing indefinitely to permit James Gerity, Jr., to file a petition for reconsideration and grant of his application without further hearing. Such a petition was filed on January 22, 1953, and on May 8, 1953, the Commission adopted an Order (FCC 53-550) granting this petition and granting the Gerity application. On May 14, 1953, the Chief Pontiac Broadcasting Company

filed a petition requesting the Commission to set aside its action of May 8, 1953, in granting the James Gerity, Jr., application. In addition the Chief Pontiac Broadcasting Company also filed an application for a new station in Pontiac, Michigan, requesting the very same facilities that the Commission granted to James Gerity, Jr., on May 8, 1953. On June 3, 1953, the Commission, upon consideration of the facts and arguments set forth in the Chief Pontiac petition, adopted a Memorandum Opinion and Order (FCC 53-675) denying the petition and dismissing the Chief Pontiac application.

3. Subsequent to the Commission's actions of May 8, 1953, and June 3, 1953, granting the Gerity application and denying the Chief Pontiac petitions respectively, the parties involved have filed the pleadings set forth in Paragraph 1 above. WKMH, Inc. (hereinafter called WKMF) in its petition for rehearing filed on June 8, 1953 (Pleading A) sought to have the Gerity grant set aside on several grounds. Subsequently, however, WKMF and Gerity had discussions looking toward the reduction or elimination of the interference to WKMF which would be caused by Gerity's station. As a result of these discussions, WKMF and Gerity on June 17, 1953, filed a joint motion (Pleading D) wherein WKMF "scaled down" its June 8, 1953, petition for rehearing so as to have its petition "considered solely as a protest under section 309 (c)" and Gerity consented to "WKMF's petition insofar as it constitutes a protest under section 309 (c)." While the Chief Pontiac petition for rehearing of June 8, 1953 (Pleading B) simply restates the contentions and arguments set forth in its initial pleading of May 14, 1953, which the Commission denied on June 3, 1953 (FCC 53-675) Chief Pontiac in its pleadings of June 22, 1953, and July 3, 1953 (Pleadings E and G, respectively) contends that Gerity's change of position—from opposing to acquiescing to a section 309 (c) proceeding—is conclusive proof that the Commission acted illegally in granting the Gerity application.

4. Chief Pontiac's petitions for rehearing (Items 1-B and 1-G above) must be dismissed on the ground that it was not aggrieved or adversely affected by the Commission's order. Its only claim of interest is as an applicant, and it did not have that status at the time of the order in question. We reaffirm our conclusion in Chief Pontiac Broadcasting Company (FCC 53-675) released June 5, 1953, that Chief Pontiac has "sustained no legal prejudice" from the Gerity grant and our dismissal of Chief Pontiac's belated application for the facilities granted to Gerity.

5. On the other hand, WKMF's claim of interference from the Gerity grant in issue must be recognized. There is no dispute to the fact that the Gerity operation will cause WKMF to suffer a loss of 1 percent of the population now receiving service from WKMF. However we do not consider it necessary to recognize the WKMF petition for rehearing (Pleading A) as a protest under section 309 (c) of the Communications Act. We recog-

nize it to be, as it was originally filed by WKMF a sufficient and timely petition for rehearing filed pursuant to the provisions of section 405 of the Communications Act of 1934, as amended, and we grant it as such. In doing so, however, we, for reasons to follow, are staying the effectiveness of our grant to Gerity rather than setting it aside.

6. In the past, we, in honoring section 405 petitions for rehearing, have generally vacated the grants in issue. However such actions were matters of discretion and not required by the provisions of section 405. In light of the clear policy of Congress reflected in the section 309 (c) provision for postponement rather than vacation in cases where the Commission has once determined a grant to be in the public interest, the Commission believes that in a case such as this it would be appropriate to apply the same policy even though a petition for reconsideration under section 405 is involved rather than a protest under section 309 (c). The facts of the case, rather than a petitioner's sometimes fortuitous choice of remedy (under section 309 (c) or 405) should be given controlling effect in determining the status of a protested grant pending hearing.

7. Accordingly, it is ordered, This 5th day of August 1953, that pursuant to section 309 (c) of the Communications Act of 1934, as amended, the above-entitled application of James Gerity, Jr. for a new station at Pontiac, Michigan is designated for hearing at a time and place to be designated in a subsequent order upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the availability of other primary service to such areas and populations.

2. To determine the type and character or program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

3. To determine whether the operation of the proposed station would involve objectionable interference with Station WKMF, Flint, Michigan, and, if so, the nature and extent thereof, the areas and populations affected thereby, the availability of other primary service to such areas and populations, and the nature and character of the program service now being rendered by Station WKMF to such areas and populations.

It is further ordered, That the above issues are not adopted by the Commission; hence, the burden of proceeding with the introduction of evidence and the burden of proof shall be on the protestant.

It is further ordered, That WKMH, Inc., licensee of Station WKMF, Flint, Michigan, is made a party to this proceeding:

It is further ordered, That the effective date of the Commission's action of May 8, 1953, in granting the above-entitled application is postponed pending a final decision in the hearing ordered above.

It is further ordered, That the above described petitions of WKMH, Inc., and

Chief Pontiac Broadcasting Company are in all other respects denied.

Released: August 7, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] W. P. MASSING,
Acting Secretary.

[F. R. Doc. 53-7132; Filed, Aug. 12, 1953; 8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1668, G-1828, G-1998, G-2026, G-2132, G-2133]

SOUTHERN UNION GAS CO. ET AL.

NOTICE OF ORDER AFFIRMING INITIAL DECISION

AUGUST 7, 1953.

In the matters of Southern Union Gas Company, Docket Nos. G-1668, G-2132; El Paso Natural Gas Company, Docket Nos. G-1828, G-1998 and G-2133; West Texas Gas Company, Docket No. G-2026.

Notice is hereby given that on July 31, 1953, the Federal Power Commission issued its order adopted July 29, 1953, affirming initial decision of Presiding Examiner in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

F. R. Doc. 53-7108; Filed, Aug. 12, 1953; 8:48 a. m.]

[Docket No. G-1792]

TEXAS EASTERN TRANSMISSION CORP. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

AUGUST 7, 1953.

Notice is hereby given that on July 31, 1953, the Federal Power Commission issued its order adopted July 29, 1953, amending order (17 F. R. 1398) issuing certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

F. R. Doc. 53-7109; Filed, Aug. 12, 1953; 8:48 a. m.]

[Docket Nos. G-2010, G-2169, G-2177]

NORTHERN NATURAL GAS CO. ET AL.

NOTICE OF FINDINGS AND ORDERS

AUGUST 7, 1953.

In the matters of Northern Natural Gas Company, Docket No. G-2010; Associated Natural Gas Company, Docket No. G-2169. The East Ohio Gas Company, Docket No. G-2177.

Notice is hereby given that on July 30, 1953, the Federal Power Commission issued its findings and orders adopted July 29, 1953, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
Secretary.

F. R. Doc. 53-7110; Filed, Aug. 12, 1953; 8:48 a. m.]

[Docket Nos. G-2063, G-2124, G-2125, G-2126, G-2140]

NORTHERN NATURAL GAS CO. ET AL.

NOTICE OF ORDER SEVERING PROCEEDINGS AND OMITTING INTERMEDIATE DECISION PROCEDURE

AUGUST 6, 1953.

In the matters of Northern Natural Gas Company, Docket Nos. G-2063 and G-2125; Independent Natural Gas Company, Docket Nos. G-2124 and G-2140; El Paso Natural Gas Company, Docket No. G-2126.

Notice is hereby given that on August 4, 1953, the Federal Power Commission issued its order adopted July 29, 1953, in the above-entitled matters, severing proceedings in Docket Nos. G-2124, G-2125, G-2126, and G-2140 from Docket No. G-2063, and omitting intermediate decision procedure in Docket Nos. G-2124, G-2125, and G-2126.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-7100; Filed, Aug. 12, 1953; 8:46 a. m.]

[Project No. 2097]

NAMEKAGON HYDRO CO.

NOTICE OF OPINION NO. 257 AND ORDER DENYING APPLICATION FOR LICENSE

AUGUST 7, 1953.

Notice is hereby given that on July 30, 1953, the Federal Power Commission issued its opinion and order adopted July 29, 1953, denying application for license in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-7111; Filed, Aug. 12, 1953; 8:49 a. m.]

[Docket No. G-2150]

HOPE NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER

AUGUST 6, 1953.

Notice is hereby given that on July 27, 1953, the Federal Power Commission issued its order adopted July 24, 1953, issuing a certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-7112; Filed, Aug. 12, 1953; 8:49 a. m.]

[Docket Nos. G-2164, G-2188]

CITY OF AUSTELL, GA. AND CITY OF FAYETTE, ALA.

ORDER CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING

On April 29, 1953, City of Austell, Georgia (Applicant), filed an application, pursuant to section 7 (a) of the Natural Gas Act, for an order of the

Commission directing Southern Natural Gas Company (Southern Natural) to establish physical connection of the latter's transmission facilities with facilities proposed to be constructed by Applicant, and to sell and deliver a natural gas supply to Applicant for local distribution within Austell and adjacent communities.

Southern Natural has been served with a copy of the application and has made no objections or reply thereto. Public notice of the application has been given, including publication in the FEDERAL REGISTER on May 19, 1953 (18 F. R. 2890)

On June 15, 1953, City of Fayette, Alabama (Applicant), filed an application, pursuant to section 7 (a) of the Natural Gas Act, for an order of the Commission directing Southern Natural to establish physical connection of the latter's transmission facilities with facilities proposed to be constructed by Applicant, and to sell and deliver a natural gas supply to Applicant for local distribution within Fayette and to rural customers along Applicant's proposed pipeline route.

Southern Natural has been served with a copy of the application and by answer filed July 15, 1953, admits it will have sufficient capacity and gas available to supply Applicant's stated requirements without impairing Southern Natural's ability to render adequate service to its existing customers and without placing an undue burden upon it. Public notice of the application has been given, including publication in the FEDERAL REGISTER on July 4, 1953 (18 F. R. 3910)

The Commission finds: It would be in the public interest and it is necessary and appropriate to carry out the provisions of the Natural Gas Act that these proceedings be consolidated for purpose of hearing.

The Commission orders:

(A) The proceedings at Docket Nos. G-2164 and G-2188 be and the same are hereby consolidated for purpose of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7, 15 and 16 of the Natural Gas Act, and the Commission's rules of practice and procedure, a public hearing be held commencing on August 20, 1953 at 10:00 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C. concerning the matters involved and the issues presented by said applications.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Adopted: August 5, 1953.

Issued: August 7, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-7101; Filed, Aug. 12, 1953; 8:47 a. m.]

[Docket No. G-2195]

NORTHERN NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On June 22, 1953, Northern Natural Gas Company (Applicant) filed an application pursuant to section 7 of the Natural Gas Act requesting permission and approval of the Commission to abandon certain facilities located in Iowa and Nebraska and heretofore utilized by Applicant for the transportation of natural-gas for direct industrial sale to Omaha Public Power District and American Smelting and Refining Company in Omaha, Nebraska. A supplement to the said application was filed by Applicant on July 10, 1953. The application as supplemented is on file with the Commission and open to public inspection.

Applicant has requested that its application be heard under the shortened procedure provided by § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure. Notice of the filing of the application has been given including publication in the FEDERAL REGISTER on August 1, 1953 (18 F. R. 4528). Such notice provides that protests or petitions to intervene may be filed with the Commission in accordance with the rules of practice and procedure on or before August 17, 1953.

The Commission finds:

(1) The proceeding appropriately may be disposed of under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure provided no protest or petition to intervene raising an issue of substance is filed on or before August 17, 1953.

(2) Good cause exists for fixing the date for hearing upon the application upon less than fifteen days notice thereof.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing be held on August 18, 1953, at 9:45 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however* That in the event no protest or petition to intervene is filed on or before August 17, 1953, the Commission may, after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 5, 1953.

Issued: August 7, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.[F. R. Doc. 53-7102; Filed, Aug. 12, 1953;
8:47 a. m.]

[Docket No. G-2196]

SOUTHERN NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On June 22, 1953, Southern Natural Gas Company (Applicant) a Delaware corporation with its principal office at the Watts Building, Birmingham, Alabama, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission facilities, subject to the jurisdiction of the Commission, as described in the application on file with the Commission and open to public inspection. In the same application Applicant also seeks authorization pursuant to section 7 (b) of the Natural Gas Act to abandon certain other facilities as described in the application.

The Commission finds:

(1) This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings.

(2) To this date no protest or petition in opposition to said application has been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 22, 1953 (18 F. R. 4260).

(3) It is reasonable and in the public interest and good cause exists for fixing the date of hearing in this proceeding less than 15 days after publication of this order in the FEDERAL REGISTER.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on August 14, 1953, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application herein. *Provided, however* That the Commission may, after a noncontested hearing dispose of the proceeding pursuant to provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 5, 1953.

Issued: August 6, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.[F. R. Doc. 53-7117; Filed, Aug. 12, 1953;
8:50 a. m.]

[Docket No. G-2197]

MISSISSIPPI VALLEY GAS CO.

ORDER FIXING DATE OF HEARING

On June 22, 1953, Mississippi Valley Gas Company (Applicant) a Mississippi corporation with its principal place of business in Jackson, Mississippi, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission facilities, subject to the jurisdiction of the Commission, as described in the application on file with the Commission and open to public inspection.

The Commission finds:

(1) This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure Applicant having requested that the application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 9, 1953 (18 F. R. 4037).

(2) It is reasonable and in the public interest and good cause exists for fixing the date of hearing in this proceeding less than 15 days after publication of this order in the FEDERAL REGISTER.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on August 20, 1953, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application herein. *Provided, however* That the Commission may after a noncontested hearing, dispose of the proceeding pursuant to provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 5, 1953.

Issued: August 7, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.[F. R. Doc. 53-7103; Filed, Aug. 12, 1953;
8:47 a. m.]

[Docket No. ID-1142]

DARWIN S. BROWN

NOTICE OF ORDER AUTHORIZING APPLICATION
TO HOLD CERTAIN POSITIONS

AUGUST 6, 1953.

Notice is hereby given that on August 3, 1953, the Federal Power Commission

issued its order adopted July 29, 1953, authorizing applicant to hold certain positions pursuant to section 305 (b) of the Federal Power Act in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.
[F. R. Doc. 53-7113; Filed, Aug. 12, 1953;
8:49 a. m.]

[Projects Nos. 1985, 1986, 1987]
CALIFORNIA-PACIFIC UTILITIES CO.
NOTICE OF ORDER DETERMINING COST AND
PRESCRIBING ACCOUNTING THEREFOR

AUGUST 6, 1953.
Notice is hereby given that on July 29, 1953, the Federal Power Commission issued its order adopted July 23, 1953, determining actual legitimate original cost and prescribing accounting therefor in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.
F. R. Doc. 53-7114; Filed, Aug. 12, 1953;
8:49 a. m.]

[Project No. 2027]
BADLEY INVESTMENT CO.
NOTICE OF ORDER TERMINATING LICENSE

AUGUST 6, 1953.
Notice is hereby given that on August 1, 1953, the Federal Power Commission issued its order adopted July 29, 1953, in the above-entitled matter, terminating license (Minor) effective as of December 31, 1951.

[SEAL] LEON M. FUQUAY,
Secretary.
F. R. Doc. 53-7115; Filed, Aug. 12, 1953;
8:49 a. m.]

[Project No. 2117]
SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY
NOTICE OF ORDER ISSUING MINOR-PART
LICENSE

AUGUST 6, 1953.
Notice is hereby given that on June 12, 1953, the Federal Power Commission issued its order adopted June 11, 1953, issuing minor-part license (Transmission Line) in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.
[F. R. Doc. 53-7116; Filed, Aug. 12, 1953;
8:50 a. m.]

SECURITIES AND EXCHANGE
COMMISSION
[File No. 1-3237]
ADOLF GOBEL, INC.

ORDER POSTPONING DATE OF HEARING
AUGUST 7, 1953.
The Commission, by order dated July 21, 1953, instituted proceedings in the
No. 158—10

above-entitled matter under section 19 (a) (2) of the Securities Exchange Act of 1934 and an investigation under section 21 (a) and (b) of said act and ordered a public hearing with respect to the matters specified in said order to be held at 10:00 a. m., e. d. s. t., on August 10, 1953, at the Regional Office of the Securities and Exchange Commission, 42 Broadway, New York 4, New York.

It now appears to the Commission that James Rosen has been appointed Temporary Receiver for Adolf Gobel, Inc., in proceedings, pending in the District Court of the United States for the District of New Jersey, for the reorganization of the corporation under Chapter X of the Bankruptcy Act as amended.

Said Temporary Receiver has requested a postponement of the date for hearing in this proceeding and has advised the Commission that a Trustee may be appointed for the debtor in the week commencing August 9, 1953. The Commission being duly informed in the premises deems it appropriate under the circumstances to postpone the date of the commencement of the hearing for one week; and,

It is ordered, That the hearing set for August 10, 1953, at 10:00 a. m. be and the same is hereby postponed to August 17, 1953, at 10:00 a. m., and,

It is further ordered, That this amended order shall be served on Adolf Gobel, Inc., and Anthony DeAngellis, and this amended order, together with the original order in this matter shall be served on James Rosen, Receiver, Adolf Gobel, Inc., Hudson Dispatch Building, 400 Thirty-eighth Street, Union City, New Jersey. Such service shall be made personally or by registered mail forthwith and this amended order shall be published in the FEDERAL REGISTER.

By the Commission.
[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-7106; Filed, Aug. 12, 1953;
8:48 a. m.]

[File Nos. 54-54, 59-50, 70-559]
NORTHERN STATES POWER CO. ET AL.
SUPPLEMENTAL ORDER REVISING FEE

AUGUST 6, 1953.
In the matter of Northern States Power Company, Delaware, File No. 54-54; Northern States Power Company, Minnesota, File No. 70-559; Northern States Power Company, Delaware, and each of its subsidiaries, File No. 59-50.

The Commission by orders entered herein on December 21, 1950, April 8, 1952, and May 15, 1952 (Holding Company Act Releases Nos. 10305, 11145 and Modifying Order) having approved the allowance to Sullivan & Worcester of a fee of \$15,000 and expenses of \$2,014.21 for their legal services as counsel to Cameron Blewend, Class A stockholder of Northern States Power Company (Delaware) in the proceedings for the reorganization of the Northern States Power Company holding company system pursuant to section 11 (c) of the

Public Utility Holding Company Act of 1935; and

The United States District Court for the District of Minnesota (Fourth Division), in proceedings for the enforcement of said fee orders (Civil Action No. 2673 of said Court) by opinion entered on January 12, 1953 and order pursuant thereto, having revised the amount of said fee allowance to \$20,000; and

Sullivan and Worcester, in order to avoid litigation, having indicated their willingness to accept a compromise fee in the sum of \$17,500 and the Commission, being of the opinion that under the circumstances such sum would be fair and equitable, having authorized counsel to enter into a stipulation to that effect, and said stipulation having been approved by the Court, and the Court having amended its order accordingly,

It is ordered, That the aggregate amount of the fee allowances to said Sullivan & Worcester for their legal services herein be, and the same hereby is, revised to read \$17,500.

By the Commission.
[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-7105; Filed, Aug. 12, 1953;
8:48 a. m.]

[File No. 70-3934]
COLUMBIA GAS SYSTEM, INC., AND NATURAL
GAS CO. OF WEST VIRGINIA

ORDER AUTHORIZING SALE OF SECURITIES BY
SUBSIDIARY TO HOLDING COMPANY
AUGUST 7, 1953.

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly owned subsidiary Natural Gas Company of West Virginia ("Natural Gas") a West Virginia corporation doing a public-utility business in the State of Ohio, having filed with this Commission a joint application and an amendment thereto, designating sections 6 (b), 9 and 10 of the Public Utility Holding Company Act of 1935 ("the act") as applicable to the proposed transactions, wherein the applicants propose that Natural Gas shall raise the funds necessary to complete the financing of its 1953 construction program by issuing and selling to Columbia (a) up to 3,500 shares of Natural Gas' common stock at the par value of \$100 per share, and (b) thereafter, but not later than March 31, 1954, up to \$350,000 principal amount of its Installment Promissory Notes, payable in equal annual installments from 1955 to 1979, inclusive, with interest at the rate of 4 percent per annum or such lower rate, being a multiple of 1/2 of 1 percent, as shall be not less than the cost of money to Columbia on its next sale of Debentures; and

Due notice of the filing of the application having been given, and a hearing not having been requested of or ordered by the Commission; and

It appearing to the Commission that section 7 of the act is applicable to the proposed issue and sale of securities by Natural Gas; and

The Commission finding that the applicable provisions of the act and the rules thereunder are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that the application-declaration as amended be granted and permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application-declaration as amended be and hereby is granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 53-7104; Filed, Aug. 12, 1953;
8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 28345]

COTTON FROM NEW MEXICO TO OKLAHOMA
AND ARKANSAS

APPLICATION FOR RELIEF

AUGUST 7, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Cotton, in carloads.

From: Points in New Mexico.

To: Sand Springs and Guthrie, Okla., Little Rock, Malvern, North Little Rock, Monticello, and Morrilton, Ark.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short-line distance formula.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 4014, supp. 17.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-7088; Filed, Aug. 11, 1953;
8:50 a. m.]

[4th Sec. Application 28346]

AUTOMOBILES FROM EVANSVILLE, IND., TO
SOUTHERN TERRITORY

APPLICATION FOR RELIEF

AUGUST 10, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Automobiles, passenger, new, carloads.

From: Evansville, Ind.

To: Points in Alabama, Georgia, Louisiana (east of the Mississippi River) Mississippi, Florida, Kentucky, and Tennessee.

Grounds for relief: Competition with rail carriers, circuitous routes.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, tariff I. C. C. No. 1118, supp. 63.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-7118; Filed, Aug. 12, 1953;
8:50 a. m.]

[4th Sec. Application 28347]

MOULDING SAND FROM ALABAMA TO SWAN
AND TYLER, TEX.

APPLICATION FOR RELIEF

AUGUST 10, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Moulding sand, carloads.

From: Points in Alabama.

To: Swan and Tyler, Tex.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short-line distance formula, additional routes.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 3736, supp. 228.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-7119; Filed, Aug. 12, 1953;
8:50 a. m.]

[4th Sec. Application 28348]

UREA FROM SOUTH POINT, OHIO, TO
CONSHOHOCKEN, PA.

APPLICATION FOR RELIEF

AUGUST 10, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: H. R. Hinsch, Alternate Agent, for carriers parties to Agent L. C. Schuldt's tariff I. C. C. No. 4542, pursuant to fourth-section order No. 17220.

Commodities involved: Urea, in carloads.

From: South Point, Ohio.

To: Conshohocken, Pa.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-7120; Filed, Aug. 12, 1953;
8:50 a. m.]

[4th Sec. Application 28349]

MAGAZINES AND PERIODICALS FROM CHICAGO, ILL., TO NORFOLK, NEWPORT NEWS, AND RICHMOND, VA.

APPLICATION FOR RELIEF

AUGUST 10, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by H. R. Hinsch, Alternate Agent, for carriers parties to Agent L. C. Schuldt's tariff I. C. C. No. 4542, pursuant to fourth-section order No. 17220.

Commodities involved: Magazines and periodicals, also parts or sections thereof, and newspaper supplements, carloads.

From: Chicago, Ill.

To: Norfolk, Newport News, and Richmond, Va.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose

their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL]

GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-7121; Filed, Aug. 12, 1953;
8:51 a. m.]

